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HARVARD BUSINESS REPORTS

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VOLUME 8

CASES ON THE MOTION PICTURE INDUSTRY

WITH COMMENTARIES

BY

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EDITOR'S FOREWORD

This volume includes 66 cases on the business aspects of the motion picture industry. These cases were selected for publication here by Professor Howard T. Lewis from among a larger number collected under his direction. It is expected that the remainder of the motion picture cases will be published in some subsequent volume.

The cases in the present volume, together with Professor Lewis' introduction and commentaries, represent a comprehensive survey of the leading business problems which the motion picture industry has had to meet. To the extent that all the cases deal with one industry, this volume differs from those previously published in the "Business Reports" series. The principle followed here, however, as with the preceding volumes has been that of presenting as nearly currently as possible the results of the School's research programs, whether carried out on industrial, functional, or other basis.

The numerous unique features of the motion picture industry might seem to narrow the interest and applicability of the material presented in this volume. The administrative problems in one industry, however, almost invariably have their counterparts in other types of business, no matter how different the operating details. Consequently, the significance of these motion picture cases for business men is by no means limited to those whose chief interests lie within the industry. The cases should have meaning for all concerned with the general conduct of business enterprise.

CHARLES I. GRAGG.

May, 1930.

COMMENTATOR'S FOREWORD

The study of the motion picture industry, of which the materials in this volume comprise a substantial part, was made possible financially by Mr. Joseph P. Kennedy, at present chairman of the Board of Directors of Pathe Exchange, Incorporated, and sincere appreciation is hereby expressed to Mr. Kennedy for the opportunity thus presented. It is further evidence of his vision that at no time nor under any circumstances did he suggest how the study should be conducted, what topics should be covered, nor how the problems selected should be treated.

Indebtedness is also acknowledged to those men in all branches of the industry, too numerous to mention individually, who gave unstintingly of their time and thought to the representatives of the Harvard Graduate School of Business Administration who approached them for assistance. Needless to say, without such real cooperation this study would have been quite impossible.

The task of collecting and writing the cases was performed by Harold H. Thurlby, Assistant Professor of Industrial Management, and Mr. Amos Hiatt and Mr. Leon F. Altstock, members of the School's research staff.

Howard T. Lewis.

May, 1930.

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ALPHABETICAL LIST OF CASES[1]

[1] In a minority of the cases, fictitious names have been used for the purpose of disguise.

HARVARD BUSINESS REPORTS

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HARVARD BUSINESS REPORTS

Cases on the Motion Picture Industry

INTRODUCTION

Few people appreciate the commercial importance of the motion picture industry in the United States and fewer still appreciate the character of the problems confronting it. Much discussion has been devoted to the effects upon each other of the so-called legitimate stage and the cinema, to the effect of motion pictures upon the minds and the morals of our people, to the personalities so prominent upon the screen, to the technique of making and projecting films, and to scenario writing. Of the purely business problems connected with this tremendous industry, however, very little has been written, and much of what has appeared is without great value. Yet one conservative estimate places the number of American people who attend motion picture exhibitions every week at approximately 100,000,000 and in so doing they expand approximately $1,560,000,000 annually. The coming of sound revolutionized the industry, and television may do so again. Meanwhile integration, both horizontal and vertical, has gone on apace, and the entrance of the electrical interests into the industry has had an effect comparable only to the increasing interest shown by many substantial financial groups. It is with some of the important aspects of the business problems connected with this development that the cases contained in this volume deal.

A brief preliminary word concerning the organization and operation of the motion picture industry might be welcomed by those not familiar with it. Roughly speaking, the industry may be divided into four parts—production, distribution, exhibition, and auxiliary services. Production may be said to cover all the steps up to and including the completion of the requisite number of positive prints. Distribution activities relate to the rental of the films to exhibitors, the "dating in" of the pictures, the physical distribution of the films, and the collection of the

amounts due. Exhibition, obviously, relates to the problem of securing films, and to the various other problems of theater management. The auxiliary services may be said to consist of those services essential to the industry but provided primarily by those not directly responsible for production, distribution, or exhibition. Thus the sale, installation, and servicing of sound or other theater equipment, the providing of needed funds for any purpose whatsoever, and the offering of independent advertising service and counsel may serve as examples. Various cases will be found in this volume dealing with these auxiliary services and no further consideration need be given to them here. The interrelation between the other three divisions of the industry is shown in some detail for one company in Chart I.

A motion picture may be said to originate with the selection of a story. At times this story is chosen prior to the selection of the principal actors who subsequently participate, while at other times a producer having certain talent under contract seeks stories adapted to those particular actors. Practically every available story or book is scanned with a view to its possibilities for use as a motion picture, and of course there are many scenarios that are written specifically for the producer. The problem of obtaining an adequate number of satisfactory stories is an extremely difficult one and will be appreciated when it is borne in mind that between 700 and 800 feature pictures alone are produced in the United States every year.

Following the approval of a story, the production manager estimates its cost of production and obtains approval for the expenditure of the requisite amount. The cast is selected and all the various departments in due time attend to their respective tasks until the completed negative is available and the requisite number of positive prints made.

In perhaps a majority of cases only the rough working sheets are available to the distribution division of the company by the time the selling season opens. This means that by the time the salesmen actually go out to sell, some few pictures have been completed; others are in the process of production; while others have been merely planned in more or less detail. Exhibitors frequently object to this procedure and urge the right to view a picture before contracting for it. Other disputes arise also in consequence of this production policy, such as those arising over

RADIO KEITH ORPH

JANUARY —

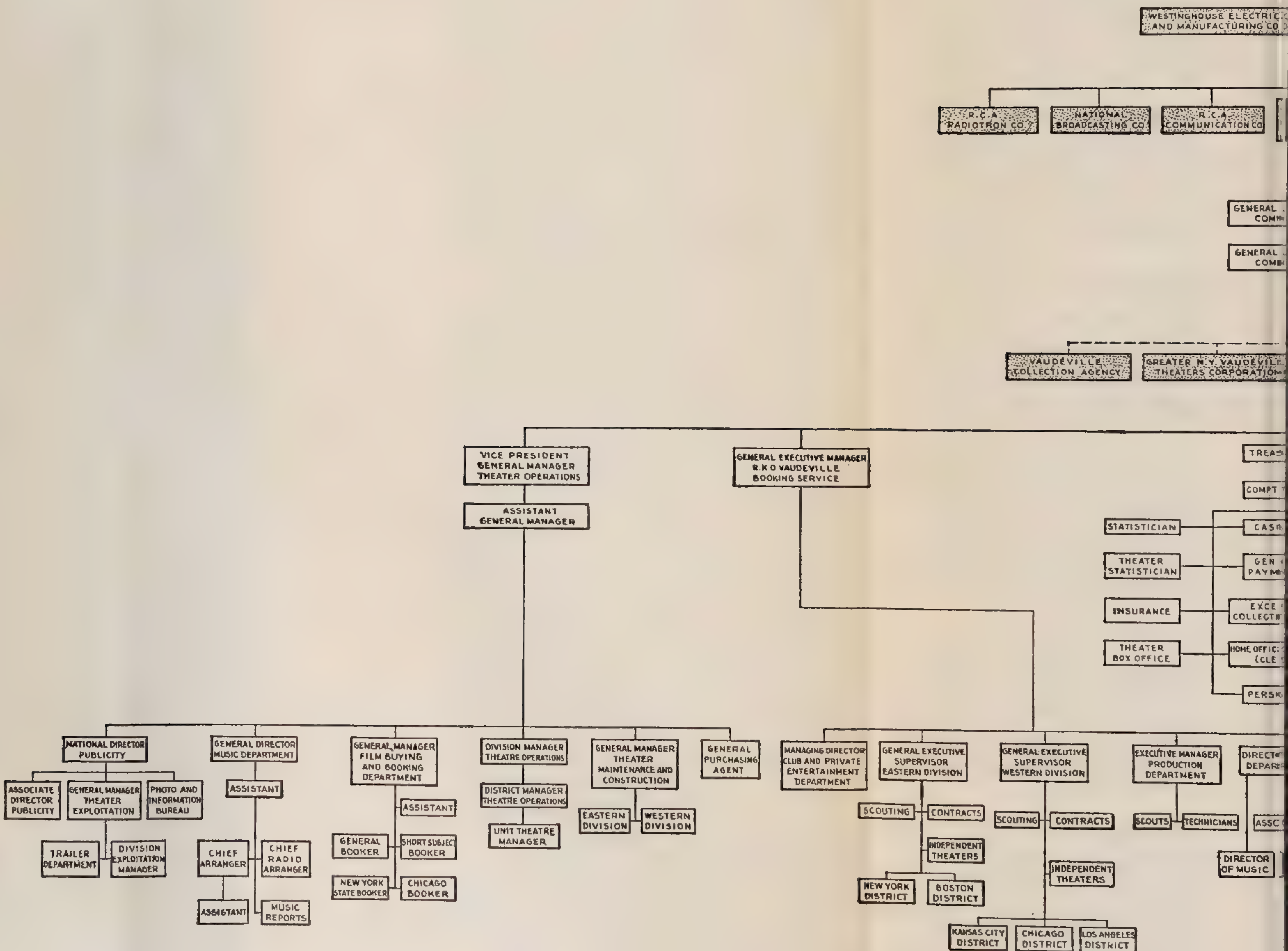

CHART I. Organization Chart of Radio

UM CORPORATION

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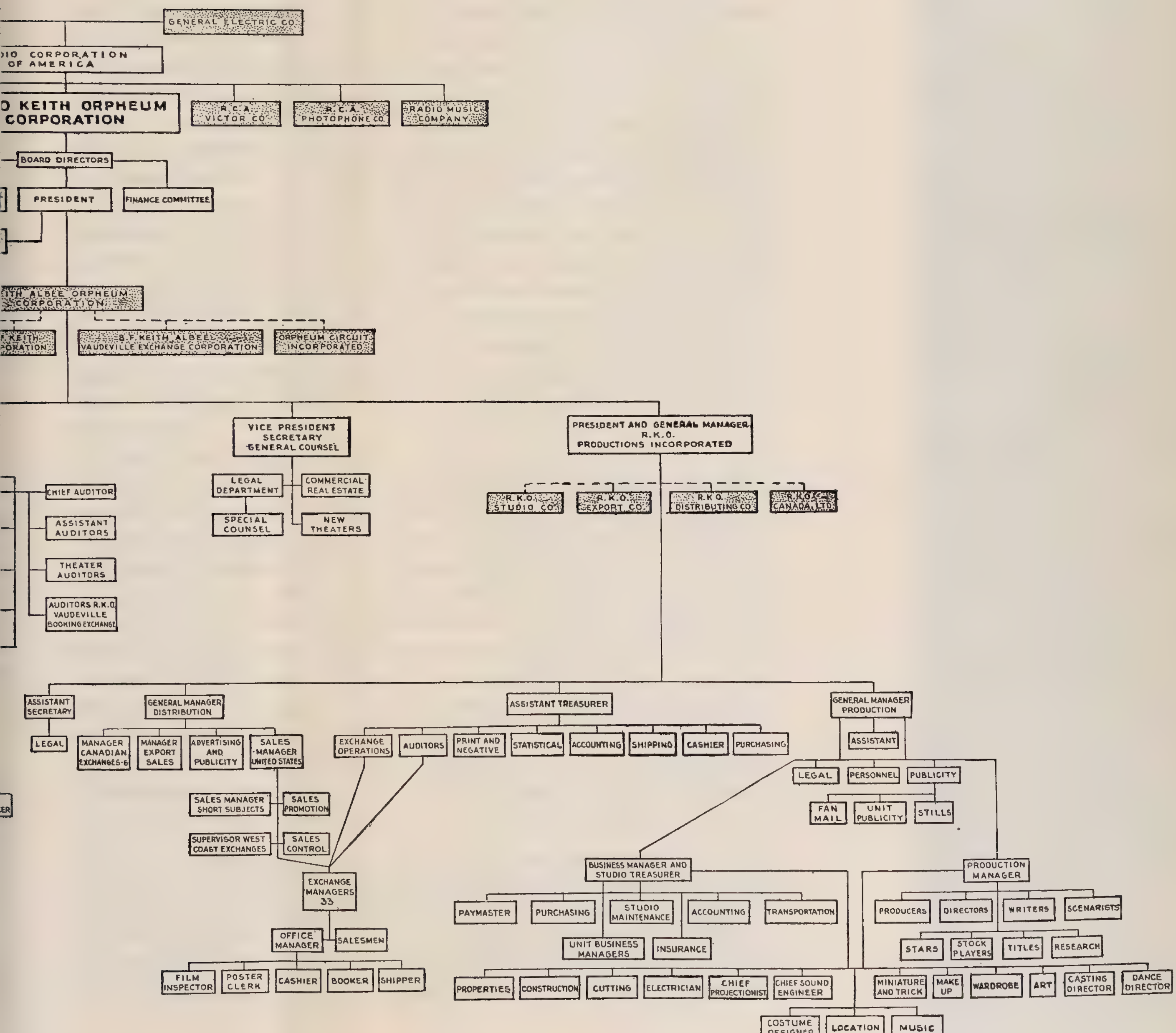

Orpheum Corporation, January, 1930.

(*Facing p. 4*)

some picture in which the exhibitor claims that other actors or plots have been substituted for the ones which he thought he was to get.

Two other problems of major significance concerning production may be mentioned. One relates to the possible adaptation of particular pictures to specific segments of the market. Up to the present practically nothing has been done in this direction except with the production of distinctly educational or industrial films. Those primarily responsible for production have contended that it is impossible to adapt a picture to the desires of particular groups of people. It is contended further that pictures which are a success in one part of the country of necessity will be successful elsewhere, in spite of repeated experiences to the contrary. The answer to the question as to whether or not pictures should be made with a view to satisfying particular interests of particular groups is dependent not only upon careful analyses of the markets but also upon whether or not the numbers of persons in any group would be great enough to warrant the necessary expenditure. Adequate attention has not been given to this aspect of production.

The other major problem to which particular reference may be made deals with the relationship between the cost of production and the selling price. It is usually contended that a producer cannot tell the value of a picture for exhibition purposes until it has actually been exhibited to the public and that this value bears no relationship to the cost of production. On the other hand, at least one of the cases contained in this volume involves the use of a contract in which the definite assumption is made that a specific relationship between the production cost and the selling price does exist. Furthermore, it should be noted that distributors do actually price a majority of pictures before they are completed when entering into contracts with the exhibitors. It is entirely possible to carry this correlation between costs and selling price[1] too far. It must be said, however, that much loose

[1] The terms "sale" and "lease" or "rentals," as commonly used in the industry, are somewhat misleading. Actually no film is *sold* to an exhibitor save in very rare instances. The title to the negative film and to all positives made from it remains permanently with the producer; hence no sale occurs. Strictly speaking, such films are neither rented nor leased. What actually happens is that the distributor who holds a copyright to a picture grants a license to an exhibitor, giving him the right to show that picture, such right being confined to a designated theater "at the location and for the period of time set forth in each license agreement."

reasoning has been resorted to. It is probable that in this, as in some other problems, the assertions made by some producers are largely defensive in character rather than substantiated by close reasoning and data.

The distribution of pictures is ordinarily in the hands of the sales division of the company. Early in the history of the industry a large number of producers relied upon independent distributors to sell their pictures for them. Usually a producer would grant to some selling company the exclusive right, upon mutually satisfactory terms, to sell one or more of his pictures in certain definitely limited territories. In more recent times, these "state right" distributors, as they came to be known, have become of distinctly minor importance, a fact due largely to the integration between producers and distributors. This integration movement has been largely the result of economic forces, although other influences have undoubtedly played their part. Consolidations between producers and distributors came as a consequence of the generally unsatisfactory results which ensued from reliance upon state right organizations for the distribution of individual distinctive feature pictures and because of the necessity of obtaining a wider distribution throughout the country than such organizations could give.

The actual task of selling pictures to theaters has, with the growth of large chain theaters, come to be broken down into two somewhat distinct phases. Sales to the large-scale theater operators are likely to be made through the general manager in charge of distribution himself, or at least through the home office. Smaller chains, on the other hand, are approached by local exchange managers, while the individual theaters are canvassed by salesmen operating under the supervision of the manager of the local exchange. The selling season for all distributors opens upon a date agreed upon in conference with the Motion Picture Producers and Distributors of America, Incorporated, and commonly falls in May or June. It is customary for an exhibitor to contract in advance for enough pictures to insure him a supply for the coming year, although the actual dates are seldom determined until later in the year. This policy is due to the common practice of granting

Obviously, however, this right has no practical value unless the exhibitor has access to a positive print of the licensed picture. Therefore, the distributor, having sold the license, subject to certain restrictions, "lends the necessary positive prints to the exhibitor to enable him to exercise such license."

to certain theaters the privilege of exhibiting a picture prior to its exhibition by any other theater in the same competitive zone and of guaranteeing it a protection in terms of both time and distance from any competitive theater. Since the date of release for many pictures is unknown and since the actual first-run exhibition date even on many released films has not been determined, subsequent-run exhibitors are placed under the necessity of having their play dates left undetermined for a considerable time to come.

Prices for films may be determined upon a flat rental basis, in terms of a percentage of box office receipts, or upon a basis of some combination of these two methods. The use of percentage pricing has become increasingly common since the advent of sound pictures, but it involves some rather difficult problems particularly as related to the checking of box office returns. Whether determined upon one basis or the other, the financial terms are likely to be the result of much bargaining. A one-price policy is unknown in this industry.

The problem of selling pictures by distributors to exhibitors in blocks, as distinguished from selling individual pictures upon individual terms, is one that has caused many disputes. There it much to be said, at least in theory, for the sale of individual pictures, each upon its own merits. Aside from any legal question which may be involved, it is urged that block booking results in an exhibitor's being forced to accept many pictures which he does not desire to exhibit for any one of a number of reasons. On the other hand, distributors maintain that in many instances the local exhibitor would not exercise such superior judgment as would result in a more satisfactory selection of pictures even if given an opportunity. It is further contended that to sell pictures on an individual basis would so increase the cost of distribution as to make such a policy prohibitive for a vast majority of exhibitors.

The problem of the sale of American pictures to foreign countries is a difficult one. American producers do produce by far the largest percentage of pictures offered today in any country. Nationalistic pride and the aspirations of foreign producing companies, combined with a fear of the consequences of continuous showing of American pictures in their nation, have led to various attempts, legal and otherwise, to restrict the number of American films shown abroad. Up to the present the American interests

have been quite able to protect themselves in the main. The question is far from being settled, however, and the keenest of ability will have to be exercised in solving it.

The exhibition phase of motion pictures is, of course, the one which most closely touches the public. Here, again, a strong trend toward integration has been evident. Theater acquisition on the part of producer-distributors followed from a desire for a wider distribution and a more profitable outlet and from a belief in the need for more thorough exploitation of new pictures. These controlled outlets give some assurance of exhibition upon which the producer-distributor can rely for a substantial return upon the money he has invested in films.

This integration has raised distinct questions common to all chain store development, of which the problems of centralization of management and of the future of the independent operator are but illustrations. Protection of the interests of unaffiliated exhibitors has given rise to the Allied States Association, whose future policy is to be watched with the keenest of interest. The future of the compulsory arbitration policy, now declared illegal, as a means of settling disputes between exhibitors and distributors, is another question on which the answer is yet to be determined.

It is clear that quite aside from the question of public relations the industry faces today a multitude of questions of first-rate importance. Some of these are legal in nature, some are largely technical in character, some relate to problems of organization and finance, while still others are more specifically problems of distribution and exhibition.

It may not be out of place to call attention briefly to some of these problems in a more specific manner. Consideration has already been directed to the need for a careful, scientific market analysis. There has been too much of general assumption, tested only by trial and error. One meets constantly with the dogmatic assertion, for instance, that the picture that does well on Broadway goes well elsewhere, in spite of repeated experiences to the contrary. Even in the same market, box office prophets frequently are sadly in error. For instance, *Variety* under date of April 15, 1930, reported concerning Chicago, in its usual picturesque language, "Futility of picture critics brutally demonstrated last week. What the guessers told the public to see flopped, v.v." There is a close parallel between this problem of forecasting

the success of a picture and forecasting the style demands for merchandise, such as fabrics, furniture, or silverware. Book publishing firms have a similar problem.[2] Obviously, the similarity cannot be pressed too far, since there are essential differences in the types of product. During the past few years, however, there have appeared in the United States several companies whose business it is to advise both large and small retailers regarding style trends and to forecast the colors, designs, etc., that are likely to prove popular. For years it was said that this could not be done. Yet today it is done with some success, and it is probable that still greater success will come with time and experience. It would be strange indeed if every other industry could profit by market analysis and careful adjustment of products to various segments of a known market, and if only the motion picture industry had nothing to learn from such efforts.

Suggestions of this sort for motion pictures are usually scouted as academic. One is tempted at times to reply that it might be well at least to give more serious thought to the issue unhampered by the unreasoning prejudice of many of those whose experience and outlook have been confined to Hollywood and Times Square. It is generally conceded that the industry was in the doldrums from lack of originality when sound, like an artificial stimulant, came to save the situation temporarily. The keen critics within the industry agree that the small middle western market demands a different type of picture from the big metropolitan market. How far has analysis gone to demonstrate that distinct pictures could not be made for this market when it is claimed that 10% of the industry's film income is derived from Times Square? Is not one answer to censorship and boards of endorsers to offer the groups what they desire instead of creating more or less self appointed judges as to what patrons should be allowed to see?

The fact that income figures for the motion picture industry have been steadily rising for some time is likely to be distinctly misleading. Such figures may rise for a variety of reasons. The novelty of sound and of color has attracted many patrons. The substantial acquisition of theaters by producer-distributors has obviously swelled their income. Direct to consumer advertising, both in newspapers and over the radio, has gone far toward

[2] See "Distributing Motion Pictures," *Harvard Business Review*, April, 1929, pp. 267–279, especially pp. 274–275.

maintaining increased levels of box office returns. It is entirely possible, however, to be badly deceived by such figures. In the long run, the one thing which can make for progress in the motion picture industry is the production and distribution of pictures which people want to see, not as a novelty but as a regular source of entertainment. Furthermore, present income figures might possibly be substantially greater than they are if such a large percentage of pictures of mediocre and low drawing power were not offered to the public. It may well be that it is again a case of a small number of exceptionally good pictures carrying the load for a substantial number of comparatively weak ones. If the number of pictures with distinct drawing appeal to particular groups could be increased and the number of pictures interesting to nobody decreased, the total income of the industry would probably be much greater than it is.

Another field that would be productive of research is that of market expenses. Objections again will be raised. It will be contended that producers, distributors, and exhibitors usually know their marketing expense. Other industries have found that the data they once claimed to have did not exist in reality or were not so compiled as to be of the greatest value for management purposes. Even assuming that the data did exist and that they were so compiled as to be of real value for management purposes, it would obviously be found tremendously valuable to have accurate and comparable data on the industry as a whole with which individual company figures could be contrasted. In this regard, it is assumed by many unfamiliar with distribution cost studies that such investigation necessitates rendering confidential data available to competitors, an assumption so unsound as to call for no argument among those many industries that have had experience in this connection. It may be added that one of the amusing things in connection with this study was the tremendous number of facts well known to persons in the industry that were believed by executives of individual companies to be their exclusive property.

The value of such cost studies should be apparent. Harold B. Franklin argued for such an analysis concerning theaters in his "Motion Picture Theater Management." Once again one is tempted to ask of the sceptic: "If the grocery manufacturers; wholesale druggists; building and material supply dealers; retail

department, shoe, and grocery stores; to say nothing of many others, all testify as to the value of these studies, why should the motion picture field be any exception?" The answer should be obvious.

The lack of adequate data in this field can be illustrated by a single instance that could be supplemented by anyone who has attempted to gather tangible figures from the industry. The commonly quoted figure on theater attendance for 1928 and 1929 is somewhere between 115,000,000 and 120,000,000 persons per week. Those who use this figure almost invariably associate with it $800,000,000 per year as the annual box office receipts gross. Simple division gives the average price of admission as approximately 13¢, a figure obviously absurd. On the other hand, an average admission price of 40 to 50¢ would appear reasonable; but on this basis box office receipts for 1929 would be over $2,250,000,000 instead of the $800,000,000 so commonly cited. Not long since in two separate articles in the same issue of a widely read trade journal there was a discrepancy of 5,000,000 in the estimate of the weekly attendance, or, in terms of money, $2,500,000. In progressive management, such a situation speaks for itself. The simple fact is that no one, inside or outside the industry, possesses many of the essential facts.

Space does not permit a discussion even in the briefest of treatment of the many other problems that sooner or later must be attacked. The purely commercial problem of foreign distribution, the intensely difficult problem of internal organization, complicated as it is by both personnel and expansion policies, the proper and orderly development of the field open to industrial and commercial films, and the various financial problems, are but a few.

Yet it is only fair to say that the existence of these needs is increasingly recognized. They will be definitely attacked and the questions answered beyond any doubt. The fact that they have not been more definitely dealt with in the past is due almost wholly to the comparative newness of the entire industry, the astounding rapidity of its development, and the startling character of the technical changes that have been constantly occurring.

The industry could not take any one step more definitely forward than to create an organization, within the industry and mutually supported perhaps, for the purpose of meeting these purely

business problems through well-directed and purposive research, the results of which would be available to all who supported such studies. There is a real need for an organization dealing more particularly with public relations and with legal questions, but there is also a definite need for a type of organization whose interests would not duplicate this latter type of organization. Such a research body should not be organized simply for the collection of data. It should be forward looking and should feel free to suggest interpretations of the data it has collected for the consideration of those most vitally concerned. Once again, one is tempted to say, "Logic indicates the wisdom of such a step, and the experiences of other industries confirm the reasoning."

First National Exhibitors' Circuit, Incorporated

EXHIBITORS—MOTION PICTURES

Purchasing Organization—*Motion Picture Exhibitors' Cooperation for Group Buying.* A group of motion picture exhibitors, organized to secure the economies of group buying and to protect themselves against large competitors, was faced with the problem of maintaining its identity. Each member of the organization was granted a franchise which enabled him to exhibit films and to distribute sub-franchises to other exhibitors. A leading competitor was endeavoring to purchase the theaters of the franchise holders and thus gain control of the organization. The latter undertook to maintain its identity by means of a voting trust agreement. (1919)

In 1917 a group of between 20 and 30 motion picture theater operators who wished to obtain for their screens motion pictures of better quality than they had been able to get in the past and to secure the benefits of group buying, formed First National Exhibitors' Circuit, Incorporated, an organization to buy and distribute motion pictures. Prior to the formation of First National Exhibitors' Circuit, Incorporated, three attempts had been made to organize exhibitors into a cooperative buying combination or company. All these had failed. First National Exhibitors' Circuit, Incorporated, bought pictures direct from producers and turned them over to its members. The members had franchises from it for exhibition of the pictures in their own theaters and for resale to other exhibitors.

In 1919 the corporation found that certain producing companies which had been opposed to its formation were making a decided effort to buy the theaters of some of the members and thus to obtain their rights in the corporation and eventually to control it. The corporation, desiring to retain its own identity, was confronted with the problem of preventing outsiders from buying the franchises of its members. Experience also had led the executives to believe that it was desirable for the corporation to secure greater centralization of control over the methods of distribution and to have more direct relations with the exhibitors to whom its members were selling pictures than it had had in the past.

After preliminary negotiations the organization of First National Exhibitors' Circuit, Incorporated, had been effected on February 1, 1917, by the signature of 23 exhibitors to an agreement. By the terms of the agreement these exhibitors were to receive for exhibition in their theaters all the pictures which the company might purchase. They were to organize exchanges through which they would sell the pictures for exhibition to other exhibitors in their various territories, and were to subscribe to the capital stock of the new company. A list of the original franchise holders is given in Exhibit 1.

Exhibit 1

List of the Original Franchise Holders of First National Exhibitors' Circuit, Incorporated

Name	Business Activities on Feb. 1, 1927	Territory of First Nat'l Franchises	Percentage of Cost Allotted	Amount of Capital Stock Subscribed
T. L. Tally Los Angeles	1 theater in Los Angeles An exchange	Southern Calif. and Arizona	3%	$1,500
Turner & Dahnken* San Francisco	11 theaters in Calif. 1 theater in Reno, Nevada	Northern Calif., Nevada, & Hawaii	4%	$2,000
Jensen & Von Herberg Seattle 3 franchises	5 theaters in Washington, Ore. and Montana An exchange	Washington, Oregon, Montana, Alaska, Northern Idaho	7%	$3,500
Robert Lieber* Indianapolis	1 theater in Indianapolis, Indiana An exchange	Indiana	3%	$1,500
*Thomas Saxe† 2 franchises Milwaukee	4 theaters in Wisconsin & Minnesota	North Dakota, South Dakota, Wisconsin & Minnesota	5%	$2,500
E. Mandelbaum Cleveland 2 franchises Sub-franchises 126	3 theaters in Cleveland, Ohio	Ohio	6%	$3,000
J. H. Kunsky* Detroit	2 theaters in Detroit, Michigan	Michigan	4%	$2,000
Josiah Pearce &‡ Sons New Orleans	2 theaters in New Orleans	Louisiana and Mississippi	2%	$1,000
Wm. Sievers Sub-franchises—40 St. Louis	2 theaters in St. Louis An exchange	Missouri	3½%	$1,750
E. H. Hulsey* (4 associates) Dallas Sub-franchises—140	17 theaters in Texas, Arkansas, Oklahoma An exchange	Texas, Oklahoma, Arkansas	4%	$2,000

* Also distributed pictures other than those supplied by First National Exhibitors' Circuit, Incorporated.

† Carl Laemmle, president of Universal Pictures Corporation, had a 50% interest in this franchise and the pictures were distributed through his exchange at Minneapolis.

‡ This firm signed the original agreement but never paid in the money for its stock. In May, 1917, the Saenger Amusement Company purchased the stock and obtained the franchise.

EXHIBIT 1 (Continued)

Name	Business Activities on Feb. 1, 1927	Territory of First Nat'l Franchises	Percentage of Cost Allotted	Amount of Capital Stock Subscribed
Big Feature Rights Corp., (Fred Levy) Louisville	3 theaters in Louisville An exchange	Kentucky, Tennessee	2%	$1,000
Tom Moore Washington, D. C.	4 theaters in Washington, D. C.	Maryland, Delaware & D. C.	3%	$1,500
Rialto Theaters Corp.,§ (S. L. Rothafel) New York City 2 franchises	Rialto Theater	N. Y. State	11%	$5,500
Empire Theater Co.* (Nathan Gordon) 2 franchises Boston	13 theaters in Conn. & Mass. An exchange	Me., N. H., Vt., Mass., R. I., and Conn.	7%	$3,500
Jake Wells, Inc.* Richmond, Va.	18 theaters in Va., Tenn., and Georgia	Va., N. C., S. C., Ga., Fla., & Ala.	3%	$1,500
Dominion Amusement Co., Ltd. Ottawa	1 theater in Ottawa	Canada east of Fort Williams and Port Arthur	3%	$1,500
W. H. Swanson* (Harry Nolan) Denver	5 theaters, Colorado An exchange	Colo., Wyoming, N. M., Utah, & Southern Idaho	3%	$1,500
Frank G. Hall New Jersey	2 theaters in Paterson, N. J. An exchange	New Jersey	3%	$1,500
Rowland & Clark* Pittsburgh	9 theaters in Pa.	West Va. & Western Pa.	4%	$2,000
A. H. Blank* Des Moines	6 theaters in Neb. and Iowa An exchange	Iowa, Kansas, and Nebraska	5%	$2,500
Central Film Co.* (Jones & Ascher) Chicago	6 theaters in Chicago An exchange	Illinois	6½%	$3,250
Harry Schwalbe† Philadelphia	....	Eastern Pa.	4½%	$2,250
Western Theater Co., Ltd. Vancouver, B. C.	1 theater in Vancouver, B. C.	Canada west of and including Port Arthur and Fort Williams	2½%	$1,250

Total number of theaters—117

The rights for the foreign distribution of the company's pictures were sold to Australasian Films, Incorporated.

* Also distributed pictures other than those supplied by First National Exhibitors' Circuit, Incorporated.

† Mr. Schwalbe with the Mastbaum interests of Philadelphia controlled the Peerless Feature Film Company. These interests also controlled the Stanley Booking Corporation and 50 or 60 theaters in Pennsylvania.

§ Turner and Dahnken had a 60% interest in this franchise and J. D. Williams a 20% interest.

The reasons for the formation of First National Exhibitors' Circuit, Incorporated, were probably best presented by the following statements made in Federal Trade Commission Docket No. 835 against Famous Players-Lasky Corporation, in which case testimony about the formation of First National Exhibitors' Circuit, Incorporated, occupied a prominent position. As a result of certain strong personal rivalries and because of the anticipated keen competition between First National Exhibitors' Circuit,

Incorporated, and the Famous Players-Lasky Corporation, the formation of the former became a controversial matter. The viewpoint expressed by the Federal Trade Commission was substantially that of the founders of First National Exhibitors' Circuit, Incorporated. That set forth by the Famous Players-Lasky Corporation was its own.

The Federal Trade Commission in its brief made the following summary of the testimony:[1]

FIRST NATIONAL WAS AN ORGANIZED EFFORT OF SOME 20 EXHIBITORS

1. To open a market for, and to encourage, the independent producers to continue in business.
2. To obtain better pictures for their theaters.
3. To obtain pictures at a price they could afford to pay and make a reasonable profit.

FIRST NATIONAL WAS AN ORGANIZED PROTEST OF THESE EXHIBITORS

1. Against Zukor's[2] expressed purpose to merge the three branches of the industry.
2. Against Zukor's methods of selling the combined product of his numerous merged producing companies, which was resulting in destroying the market for the small independent producers.
3. Against Zukor's dominating control of the best stars and directors which compelled the exhibitors to buy Zukor's product, whether desirable or not, at exorbitant prices.

The Famous Players-Lasky Corporation in the same case summarized the following reasons advanced by witnesses for the formation of First National Exhibitors' Circuit, Incorporated.[3]

1. Exhibitors understood that the Famous Players-Lasky Corporation was planning to go into exhibition.
   (This Famous Players-Lasky Corporation denied)
2. Film rentals were increasing and it was hoped by the formation of this company to buy cooperatively at lower prices.
3. The franchise holders hoped to participate in the profits of distribution as well as exhibition.
4. Famous Players-Lasky Corporation pictures and those of other companies were being sold only in blocks.
   (The Famous Players-Lasky Corporation argued that the franchise system also was block booking.)

[1] Federal Trade Commission brief, Part 1, pages 56–58 in case against Famous Players-Lasky Corporation.

[2] Mr. Zukor was president of the Famous Players-Lasky Corporation.

[3] Brief of Famous Players-Lasky Corporation, Vol. 1, page 140 in case *Federal Trade Commission* v. *Famous Players-Lasky Corporation.*

5. In 1917 some theaters were unable to get any pictures when buying individually.
6. Pictures being produced by most of the large companies were made under "factory methods" and were not always desirable.

When the exhibitors signed the contract forming First National Exhibitors' Circuit, Incorporated, they agreed to accept from the company franchises granting to each of them in their respective territories the right to exhibit in their own theaters and also to sell for exhibition in other theaters all the pictures purchased for them by the company. Each exhibitor had exclusive rights in his territory. All the exhibitors had theaters in which they showed the pictures as soon as they were received from the company. While all of them agreed to distribute the pictures in their territories, some of them, at the time of the signing of the agreement, did not operate exchanges. Those who did not, at once established exchanges, hired salesmen, and, like the other exhibitors, began selling the pictures to outside exhibitors.

Each individual exchange functioned independently. It used whatever selling methods it chose, accepted whatever prices it decided upon for its pictures, advertised as it wished, and handled the films of the pictures by whatever methods it found most efficient. Practically its only connection with First National Exhibitors' Circuit, Incorporated, was that it received for all the pictures released by that company the rights to show them in its theaters and to sell exhibition rights in its territory, and that it was required to contribute to the support of the head office of the company. It was not required to refer the contracts of exhibition with outside theaters to the company for approval. No stipulations were made as to the minimum number of pictures to be released by First National Exhibitors' Circuit, Incorporated. These franchises were for a period of 25 years and could be cancelled only by the company and by it only in the event that the franchise holder became bankrupt or otherwise failed to meet obligations to the company.

The methods by which the exchanges sold the pictures to exhibitors were not uniform. In some cases the pictures were sold for a flat price which was determined as a result of a bargain, as were most motion picture prices. In others a percentage arrangement was decided upon by which the exhibitor and the exchange divided the earnings of the pictures at the box office

according to an agreed percentage, as, for example, 50% to the exchange and 50% to the exhibitor. Some sales included only one or a few pictures while others were for large groups of pictures. In many cases the sales were made on a block booking basis. Some of the exchanges which sold First National pictures also sold pictures of other companies.

Three of the exchanges issued sub-franchises, similar in nature to the franchises which they held from First National Exhibitors' Circuit, Incorporated, to certain of the exhibitors in their territories. These were the exchanges in Dallas, St. Louis, and Cleveland. The Cleveland exchange had 126 such sub-franchises; the St. Louis exchange, 40; and the one in Dallas, 140. These sub-franchises entitled and bound the holders to the use of the pictures released by the company and furnished to the exchange under which they held their sub-franchises. Various means of reaching an agreement upon the prices to be paid for the different pictures were used. The agreement between the Cleveland exchange and its sub-franchise holders contained the following provisions about exhibition rights and pricing:

> Each subscriber hereto shall have the sole and exclusive right to the first showing of each moving picture film, purchased by the company, in the theater set after subscriber's name as signed to this agreement, and in the city or town where such theater is located for a period of thirty (30) days. The subscriber shall also have the right to further exhibition of such picture, any time after sixty (60) days subsequent to the thirty day protection period, above outlined, subject to standard form of agreement to be issued by the company, and approved by the stockholders.
>
> Each subscriber shall contribute his share of the release price of each moving picture film purchased by the company, by remitting the same to the Treasurer of the company, within fifteen (15) days after notice shall be given to such subscriber, by registered mail, of the acquisition by the company of each moving picture play.
>
> The share to be paid by each subscriber shall be determined as follows:
>
> The percentage of cost to the Ohio Company being six and one-fourth (6¼) per cent of the total cost of United States and Canadian Rights on each moving picture play purchased by the New York Company. The basis of cost to each subscriber is to be figured on the net cost to the Ohio Company as above determined. Each subscriber shall pay a sum equal to the per cent of the cost as the percentage set opposite his name and signed to this agreement.

> In addition to the cost as above provided, the subscriber shall pay $1.00 per day, per reel, for each day's possession of the film in cities of five thousand (5,000) and over; in towns under five thousand (5,000), fifty cents per reel.
>
> Each subscriber shall be obligated to use only the films which the company shall procure at a fixed price, and is not obligated to use any films which may be procured in whole or in part upon a percentage basis or other basis that may be contingent or uncertain. The subscriber, however, shall have the refusal to lease for exhibition, such film attraction.

The agreement between First National Exhibitors' Circuit, Incorporated, and the exhibitors who formed it provided also for subscription to the capital stock of the company, which was fixed at $50,000. The amount subscribed by each exhibitor bore the same proportion to the total as the sales value commonly placed on his territory by men in the industry bore to the sales value of the entire United States and Canada. The board of directors of the company was elected by the stockholders. The first board of directors was composed of seven men. Mr. J. D. Williams, who had done most of the promotional work, was made general manager.

The contract between the company and each franchise holder required the latter to accept for exhibition and for distribution to other exhibitors every picture released by the company. In the first year only two pictures were released, but later the number rapidly increased. Mr. J. D. Williams, who from 1917 to 1922 was general manager of the company, in testifying without notes before the Federal Trade Commission in the case against the Famous Players-Lasky Corporation made the following statements about the number of pictures released; 1917, "I think only 2"; 1918, "About 16"; 1919, "24 or 25, I think"; 1920, "About 45"; 1921, "About 60"; 1922, "Up to October about 40"; 1923, "About 60."

In Schedule 3 of its brief covering the same case the Famous Players-Lasky Corporation inserted the following schedule showing the number of pictures released by First National Exhibitors' Circuit, Incorporated:

1917	4
1918	11
1919	21
1920	47
1921	50
1922	43
1923	46

In its brief on the same case the Federal Trade Commission, in its Exhibit 37, gave the following schedule of pictures released by First National Exhibitors' Circuit, Incorporated:

1917	2
1918	16
1919	21
1920	44
1921	60
1922	43

The selection of pictures to be purchased and the actual purchase of them were undertaken by the general manager of the company under the direction and supervision of the board of directors. The general manager negotiated with producers of pictures and either contracted for the production of pictures or purchased them after they were made. The price to be paid for each picture was approved by the board of directors. When the company received the picture, it prepared a sufficient number of prints to serve its members and shipped the prints to the members' exchanges. Each exchange paid the company a certain proportion of the cost of the picture and a small percentage of its income for the upkeep of the head office in New York City.

The method of fixing the proportion of the cost to be paid by each exchange was decided upon when the original agreement was signed. At that time the general manager of the company calculated the gross revenue received, by each of some 50 pictures produced by various companies, from each of the territories into which the company had divided the United States and Canada. Rather accurate estimates of these amounts were available. An average was then computed for the 50 pictures and from that a percentage of the total gross revenue was affixed to each territory. These percentages were in agreement with the percentages generally regarded in the industry as the proper allotment to the various territories. For instance, the New England territory had returned about 7% of the gross revenue on most pictures released in the past by different companies and it was classed as a 7% territory by the new company. New York was an 11% territory, and Michigan a 4% territory. If the company paid a producing company $100,000 for a picture, each of the exchanges would be required to pay the company its allotted proportion of that price. Thus New England would pay $7,000, and New York $11,000.

These percentages were also used in determining the amount of the company's capital stock to be subscribed by each of the exchanges. Their primary use, however, was to fix the amount to be paid by each exchange for the pictures released by the company.

All revenue earned by a picture over and above the amount paid to the company was the property of the exchange save for a small payment made to the company for the upkeep of the head office. This payment was fixed at 5% of the gross revenue earned by the sale of the pictures for exhibition. This gross revenue was to include not only the revenue earned by sale to outside exhibitors, but also the amounts paid by the members to themselves as exchanges for the use of the pictures in their own theaters. There was no means available to the company of checking the amount it should receive. The amount received, however, proved sufficient to cover the cost of operation. Had the payments been insufficient, the percentage would have been increased. If they had been too large, the percentage would have been decreased or a dividend declared by the company; in this manner, the overpayment would have been returned to the members. It was not anticipated that the company, as such, would operate at a profit.

From 1917 to 1920, First National Exhibitors' Circuit, Incorporated, operated along these lines to the profit of the members, who used the pictures for exhibition in their own theaters and derived additional income by selling the pictures to other exhibitors through their exchanges. As the business developed, the sale of pictures to other exhibitors in many instances became of more importance and more profit to the members than the operation of their own theaters.

Although the operations of the company proved profitable, certain problems arose between 1917 and 1919 which required definite steps for the protection and improvement of the company's position. Ever since its formation certain producing and distributing companies had made continuous efforts to break up the company or to obtain control of it by purchasing the stock and assuming the franchises of some of the franchise holders. They apparently believed that its combination of distribution and exhibition was harmful to them. Definite proposals of an attractive nature were made to several of the franchise holders.

Another problem requiring attention was the lack of control over the exchanges operated by the members. It was becoming increasingly apparent in the industry that distribution was a function which required centralized control and uniform policies. It seemed that without that control no company could hope to develop its own trade-mark, establish its stars and pictures in the mind of the public, or even gain a reputation for its service and methods of dealing with exhibitors. No national advertising could be conducted by a company as decentralized as was First National Exhibitors' Circuit, Incorporated.

Having the solution of these and other problems in mind, the stockholders of the company in 1919 formed Associated First National Pictures, Incorporated. This company assumed the activities and acquired the stock of the old company, placed its own stock in a voting trust, and centralized the control of the various exchanges under its head office.

The new company took over the exchanges then being operated by the franchise holders and organized them into a national system of exchanges under the control of the head office of the company. It obtained control by purchasing the assets of the exchanges on appraisal. It then placed the employees of the various exchanges on its pay roll. In this way, the control of the individual exchanges was removed to Associated First National Pictures, Incorporated, which in turn was owned and controlled by the franchise holders through ownership of stock. All exhibition contracts were required to be approved by the company. By its approval or rejection the company could control the conditions under which its pictures were being shown and the prices at which they were sold.

Stock in the new company was issued to franchise holders in the same proportions and in the same manner as the stock in the old company had been issued. Upon the formation of the new company, however, it was desired to protect the ownership of the stock so that competing distributors could not buy blocks of stock and eventually obtain control of the company. All the stockholders, therefore, placed their stock in voting trust with a board of five trustees selected by the board of directors. In this way, efforts of outsiders to buy into the company were blocked for a time.

The method by which the new company allocated the prices to the exchanges differed from the method used formerly. When a new picture was purchased by the company it sent assessment

notices to the exchanges requesting each exchange to pay to the head office a portion of the total cost of the picture. Each exchange was assessed in proportion to the sales value of its territory as already determined. By this method, the entire cost of the picture was paid by the exchanges. The payment was considered as an advance by the exchange against the anticipated earnings of the picture. As the exchanges received payments for the exhibition of the picture, they retained them except for a commission of 10% of gross receipts which they paid to the company to cover overhead expenses of the head office. When an assessment or a commission was paid by an exchange, that exchange was credited for the payment, on the books of the company. As receipts were reported by the exchange they were debited to the account and were retained by the exchange in its own bank account and were its property. It was expected that the receipts eventually would exceed the payments to the head office and that there would be a debit balance in the account. When this occurred the excess amount was to be paid to the head office. Thus the exchanges were financing the operations of the company and recovering from the earnings of the pictures only the amount of their advances. The exchanges' only opportunity to share in the profits of the company was in the receipt of dividends on the stock which they held. All other relationships between the exchanges and the company were expected to balance.

Each of the franchise holders in the new company issued sub-franchises to selected exhibitors in their territories. In most cases they organized companies to which they sold their stock in Associated First National Pictures, Incorporated. They retained a controlling proportion of the stock of the local company and sold the rest of the stock to exhibitors. Subscribers to this stock were required to accept sub-franchises by which they agreed to exhibit in their theaters all pictures distributed by Associated First National Pictures, Incorporated. Most of the agreements covering the subscription to stock in the local companies contained substantially the same provisions about pricing as those quoted from the sub-franchise agreement of the Cleveland exchange.

In 1920 the company had outstanding 34 franchises to exhibitors who also operated exchanges for the distribution of the company's pictures, and about 3,400 sub-franchises to exhibitors. The plan of operation of the new company was effective and

resulted in the protection of the company against outside interests. The franchise and sub-franchise system proved satisfactory and operated to the profit of all concerned. In most cases the franchise holders had realized substantial profits from the sale of stock in the local companies. There were, however, a number of exhibitors holding sub-franchises who were dissatisfied. The two principal reasons for such dissatisfaction were, first, that the percentages allocated to the theaters for the determination of the prices to be set upon pictures were too high and, second, that certain exhibitors did not like to be forced to take all the pictures released by the company. Between 1920 and 1922 the number of sub-franchises in force dropped from about 3,400 to about 2,700. The executives of the company, however, were of the opinion that the sub-franchise system was working in a satisfactory manner and that the decrease was to be expected. No efforts were made during that period to recruit new sub-franchise holders.

COMMENTARY: This case illustrates some of the difficulties which confront those who attempt to form a cooperative organization as a means of strengthening their buying position. First National Exhibitors' Circuit, Incorporated, was organized to accomplish three definite purposes: first, that of securing better pictures than were available through the usual channels; second, that of forming a definite protest against the restrictive measures which the exhibitors felt were being imposed by the more powerful producers and distributors; and third, that of obtaining pictures at more attractive prices. It is interesting to note that these same three motives have been influential in bringing into existence most of the other cooperative buying organizations that have been attempted.

It is noteworthy, however, that in the case of this company the attempt was a notable success, whereas in most other instances, exhibitors' cooperative organizations have failed to accomplish their major purpose. The ultimate success in this instance is probably due to three factors. The first is the adoption of measures to prevent those who might be interested in the company's failure from acquiring control through stock purchase. The second factor is the establishment of definite control over the exchanges. Centralized control and uniform policies were believed essential to success, and rightly so. It is true that some real measure of success was achieved prior to the reorganization. It is to be doubted, however, whether the original policy would have been permanently successful as the industry became more definitely organized and competitive conditions changed.

A third factor which goes far to explain the success of this particular experiment is to be found in a movement toward close integration between exhibitors and the exchanges, a tendency which later materialized into definite control over production. The case illustrates the economic influences which, in the motion picture industry, apparently lead to integration between producer, distributor, and exhibitor. In some instances these influences are of a defensive character; in some instances doubtless the lure of profit is a major actuating motive. In any case, there seem to be sound economic reasons underlying this integration.

November, 1929 H. T. L.

Ainsworth Pictures, Incorporated[1]

PRODUCER—MOTION PICTURES

Distribution Organization—*Regional Exchanges Expanded through Purchase of Organized National Exchanges.* A corporation producing motion pictures, which it sold through a few regional exchanges, desired a wider distribution of its product. It decided to purchase a controlling interest in a corporation with a well-established national distributing organization. After several years of operation the executives of the corporation were convinced that their purchase was justified by the results obtained.

(1925)

In 1925, Ainsworth Pictures, Incorporated, was offered an opportunity to acquire Climax, Incorporated,[1] a producer of photoplays, operating its own well-established national distributing organization. Since Ainsworth Pictures, Incorporated, at that time distributed its products through regional exchanges, the executives were considering the advisability of purchasing a controlling interest in Climax, Incorporated.

Ainsworth Pictures, Incorporated, organized in 1917 as an independent producer, made pictures in its own studios, located in Hollywood, California. Since its organization, the company had released about 20 pictures each year. These pictures were of average quality, the cost of each being approximately $125,000. Although it had been the policy of the management to produce all types of photoplays, the company had specialized in society dramas.

Since 1917, Ainsworth pictures had been sold to an average of 6,500 accounts each year. The gross revenue of about $6,000,000 a year had returned a satisfactory net profit, and as a result the company had developed financial strength and stability.

In 1917, the use of regional exchanges was a common practice among all except the largest producers. This method of marketing films utilized the services of a number of regional distributing companies known as state right exchanges,[2] each of which dis-

[1] Fictitious name.

[2] See Independent Films, Incorporated, page 295.

tributed pictures within a well-defined territory. Ordinarily these organizations were individually owned and were located in the important centers of their respective territories. State right exchanges did not confine their sales to the pictures of any one producer. On the contrary, they distributed all available films suitable to their wants.

As a rule, a state right exchange purchased from a producer the rights to distribute in its territory certain of that producer's pictures for a period of five years. It was customary for the exchange, in purchasing these rights, to pay to the producer a flat sum at the time of making the contract and before production of the pictures had been started. These deposits insured the producer a minimum income. The exchange later reimbursed itself for these advances by deducting twice their equivalent from the first sales. This amount offset the cost of distribution and allowed the distributor a fair return for his efforts. Any receipts over and above this amount were divided between the exchange and the producer in accordance with a stipulated percentage. The percentage received by the exchange usually varied from 25% to 55%. The following quotation explains this plan in practice. The contract from which this clause is quoted provided that the earnings of the pictures were to be divided 50% to the exchange and 50% to the producer.

> Section 2—The sale lessee (state right exchange) hereby agrees to advance to the lessor (the producer) the sum of $10,000 on each one of the said four pictures, it being the understanding, however, that on each one of the said four pictures the lessee is to retain the first receipts from the exhibitors up to the amount of $20,000, and that all the moneys received in excess thereof are to be divided equally between the lessor and the lessee.

At the time of its inception, Ainsworth Pictures, Incorporated, was not able to finance a national distributing organization and from 1917 to 1925 the company had distributed its pictures through 10 state right exchanges whose consolidated territories covered the entire United States. The company sold its products on the combined deposit and percentage basis, the amount of the advances, no part of which could be reclaimed by the distributor, being based upon the expected earning power of the several pictures contracted for. The percentage split varied between 75–25 and 65–35 in favor of the company.

With each distribution right, the company agreed to furnish, at cost, a sufficient number of positive prints to serve the exhibitors in that territory; to prepare and sell to the exchanges satisfactory advertising accessories, which were in turn to be sold to exhibitors for use in advertising the pictures in their theaters; and to advertise Ainsworth photoplays in the various motion picture trade papers. These papers were read by the exhibitors to whom the exchanges expected to sell the pictures. Each exchange, on the other hand, agreed to maintain a sufficient sales-force to reach all the theaters in its respective territory and to endeavor to obtain from the exhibitors prices satisfactory to Ainsworth Pictures, Incorporated. All contracts for the exhibition of the pictures were submitted to the company for approval. The company retained the right of rejection if it considered an exhibitor's offer unsatisfactory.

The president of Ainsworth Pictures, Incorporated, realized that distribution through state right exchanges offered the company several advantages. He was aware of the fact that advance deposits enabled the company to carry out its production program without recourse to outside financial agencies, and that these deposits guaranteed each picture a minimum income. Furthermore, the utilization of independently owned exchanges offered reasonably satisfactory distribution free from any large fixed overhead charge. The company's treasurer estimated that it would require approximately $1,000,000 to establish a satisfactory distribution organization of its own.

On the other hand, it was apparent to the president that state right exchanges were by no means free from disadvantages. The system was subject to all the deficiencies found in sales organizations decentralized in ownership and control. The company, moreover, waived the right to supervise the physical distribution of its products; to oversee such important service features as the condition of films, allocation of play dates, and accessory advertising; and to establish exhibitors' goodwill. Furthermore, state right exchanges usually grouped their pictures in blocks[3] without regard to the dissimilarity of the producers. This last factor not only tended to minimize the rentals allocated to each picture but it also worked against the establishment of

[3] See Federal Trade Commission *v.* Famous Players-Lasky Corporation, page 226.

the Ainsworth trade-mark. The contracts between producers and the exchanges provided that no alterations were to be made in the pictures and that the names of the producing company, cast, directors, and scenarists, and the producer's trade-mark were not to be deleted from the pictures without the permission of the company. These contracts did not require the exchanges to emphasize the company's name when selling the pictures. If the pictures were particularly good, the distributor usually managed to use his own trade-mark to the best advantage. Finally, because state right exchanges handled the products of several different producers, it was not the customary practice for them to place particular sales promotional effort on Ainsworth pictures.

In addition to these natural disadvantages, the president mentioned certain abuses which had developed in this method of distribution. The heterogeneous blocks made up by the exchanges often resulted in rather questionable price policies. For example, an Ainsworth picture might be blocked with several pictures of unknown box office value. The distributor would use the Ainsworth picture as a trading leverage in order to sell the other photoplays. Then, as it was a privilege of an exchange to allocate the prices to be paid for the individual pictures, a general average might be used. Obviously such a procedure would be unfair and would deprive Ainsworth Pictures, Incorporated, of maximum revenue. This practice was often resorted to in an effort to complete bookings for small theaters exhibiting low-quality films.

The executives of Ainsworth Pictures, Incorporated, however, thought that, despite the many disadvantages connected with state right exchanges, they offered the only practical means of distribution open to the producer having limited capital. But it was their contention that if sufficient capital was available, a producer-owned and producer-controlled distribution organization would prove more efficient and likewise more profitable than the state right exchange method.

During the period from 1917 to 1925 a majority of the large producers of motion pictures had acquired or established their own exchanges. Some had purchased control of distributing companies having nation-wide systems of exchanges. Some had built up slowly their own exchanges and sales personnel. Others had purchased interests in a number of state right exchanges and had consolidated them into a unified system of distribution.

Many producing companies had built up their distributing organizations by a combination of all these methods.

Climax, Incorporated, was an old, well-established producer and distributor whose releases ranged between 10 and 12 pictures each year. These pictures were sold individually through the company's 33 exchanges by an organization of 75 salesmen, 33 exchange managers, and 3 district managers under the control of a general sales manager. The exchanges were located in the important motion picture centers throughout the United States. In 1923, 1924, and 1925 their combined operating expense was approximately $32,000 a week. After a thorough investigation, the executives of Ainsworth Pictures, Incorporated, concluded that these exchanges were efficient.

Prior to 1920, Climax productions had been received favorably by exhibitors. This reputation had not been maintained, however, and as a result of the poor quality of the pictures released during the few years prior to 1925, the company had operated at a loss. Because of this situation, the bankers controlling the company decided in 1925 either to reorganize or to dispose of their interests. They were willing to sell a controlling proportion of Climax, Incorporated, stock for from $1,400,000 to $1,600,000.

In April, 1925, Ainsworth Pictures, Incorporated, purchased a controlling interest in the stock of Climax, Incorporated, for $1,530,000. A portion of the purchase price was paid in cash, the balance to be paid in weekly installments of $6,000 for a period of three years. In order to purchase the Climax stock, to obtain working capital for the maintenance of the newly acquired exchange system and production equipment, and likewise to engage in a sufficiently large production program to meet the capacity of this equipment, Ainsworth Pictures, Incorporated, through a large investment banking house, sold an $8,000,000 bond issue.

Aside from the addition of two more branches, Ainsworth Pictures, Incorporated, did not alter its newly acquired exchange system. The executives, however, planned to increase total production to 40 pictures a year in order to take full advantage of this large distributive organization.

From 1925 to 1928 the average gross receipts resulting from the sale of the annual production of 40 pictures to 6,500 accounts approximated $10,000,000. During that period it cost about $37,000 per week to maintain the exchanges. This amount did

not include home office expense chargeable to distribution nor the cost of prints and advertising. It was estimated in 1928 that total sales expense approximated 15% of gross sales. According to estimates made at that time, the total cost of distribution was 25% of total sales. The average weekly expenditure per salesman, including salary, was about $122, or an amount equivalent to 11% of his gross sales. All salesmen were paid flat salaries.

In 1928 the executives of Ainsworth Pictures, Incorporated, were convinced that the acquisition of Climax, Incorporated, had been sound.

COMMENTARY: The first consideration to be noted is the definite weakening of the state right exchanges as organizations for the distribution of motion pictures. In the earlier days of the industry these state right exchanges served a definite purpose. They did not, however, secure for any one producer the same intensity of distribution as a producer-controlled distributive unit could provide. As producers increased in financial strength and found it possible to establish their own exchanges, in nearly every case such a step was taken. The result was a more definitely planned sales promotional effort, a larger volume of sales, and a general strengthening of the company's position with the distributor.

For a producing company to distribute its pictures through its own exchanges it must have, in addition to adequate financial strength, a sufficient number of pictures to distribute. In this case it will be noted that Climax, Incorporated, was a producer offering but ten to twelve pictures a year. Under these circumstances it was essential that every one of these pictures be successful. As the quality declined, therefore, the situation became increasingly serious. It is quite probable that the company was not taking full advantage of the opportunities offered by the control of its own exchanges. Whether this be true or not, it may be noted that since these exchanges were costing Climax, Incorporated, $32,000 a week, each of the 12 pictures had to bear, on the average, each week approximately $2,666 of the cost of maintaining the exchanges. When Ainsworth Pictures, Incorporated, acquired Climax, Incorporated, the cost of exchange operation rose to $37,000 per week. With a planned production policy which offered 40 pictures per year, an average weekly return of approximately $925 per picture would cover the immediate exchange cost. Incidentally, it would appear from the evidence in this case that satisfactory operation by a producer of his own distributive organization requires the establishment of from 30 to 35 exchanges and the distribution of from 30 to 40 pictures per year. An apparent exception to this is to be found

in the case of the United Artists Corporation.[4] In that instance, however, it may be noted that the pictures were sold to the exhibitor at a price substantially higher than the average price obtained by other producers. Furthermore, there has been a definite tendency on the part of the United Artists Corporation to increase the number of pictures offered per year.

Three alternatives are offered to a producer who does decide to establish his own exchange organization. One is to buy a system of exchanges outright. In the main, this was the policy pursued by Ainsworth Pictures, Incorporated. Where goodwill exists and can be transferred, and where serious personnel questions do not arise, the purchase of an existing exchange system has much in its favor, provided that such a system may be obtained at a reasonable figure. The second alternative is that of establishing a complete system of new exchanges. This is frequently the only practical alternative for a company unable to buy an existing organization. It will also be held to be the sounder policy by many critics who believe that the gradual expansion of a chain unit by unit is a safer policy to be followed than the outright purchase of an existing organization. There is not sufficient evidence in the present case to justify passing upon this point definitely. It would appear, however, that the operation by Ainsworth Pictures, Incorporated, of the Climax group was successful.

It is impossible to judge from the facts of the case the exact savings realized or the exact cost of Climax, Incorporated, to Ainsworth Pictures, Incorporated. It should be noted, however, that there was a definite additional cost which resulted from the operation of the exchanges and which should have been considered in arriving at the cost of purchase.

November, 1929 H. T. L.

[4] See page 281.

Robinson Pictures Corporation[1]

PRODUCER AND DISTRIBUTOR—MOTION PICTURES

Marketing Organization—*International Merger Organized to Meet Competition of Large Corporations.* An American producer and distributor of motion pictures was asked to join an international merger of British and German companies. The American company favored the acceptance of the proposal, since such a combination would secure for the company enough additional pictures to enable it to establish its own distributing system and to sell to chain theaters, and would provide a means of entering the foreign market. A holding company was to control the merger and offered possibilities of an enlarged cooperation in production and distribution.

(1929)

In April, 1929, the president of the Robinson Pictures Corporation was considering the advisability of entering into a merger with two foreign motion picture organizations, a British company and a German company, to form a company for international production and distribution of films.

The Robinson Pictures Corporation was one of the large motion picture producing companies in America, with a capitalization at $3,000,000. During the 1928–1929 season, it had produced 12 feature pictures for distribution in the United States and Canada. Robinson pictures, costing on an average about $200,000, featured well-known stars who were available as "free lance artists." Distribution was secured through state right exchanges[2] on a specified percentage basis. The company controlled no theaters. During 1928 the company had formed roadshow companies with a manager, portable sound reproducing equipment, etc., which toured several large cities of the United States to exhibit five Robinson talking pictures.

The Robinson Pictures Corporation faced a serious problem in the distribution of its product because of the development of large motion picture companies combining the three phases of production, distribution, and exhibition. State right distribution

[1] Fictitious name.
[2] See Independent Films, Incorporated, page 295.

had become less satisfactory as a result of this development. The control of theatrical exhibition through the acquisition of theaters by the large distributing companies had materially encroached upon the market open to a state right distributor. Only the independent exhibitor was in a position to buy the pictures of such distributors. Large distributing organizations with branch exchanges in the important key centers, approximately 30 in number, and with large programs of pictures provided competition too difficult for the state right distributor to meet. The combination of producing and distributing companies, moreover, had lessened the amount of product available to the state right distributor; and he was, therefore, unable to sell any pictures except as "fill-ins," for which he received low prices. For many producers, state right distribution had never been particularly satisfactory. In the first place, such a system did not permit a producer to maintain a control over his product. Secondly, as a result of the above conditions, the possibility of securing adequate distribution in all territories was slight. Roadshowing of pictures with portable sound reproducing equipment had been resorted to by many producers as a temporary measure, effective only during a period in which theaters were unable to secure permanent installations of sound equipment. Until it could secure distribution through its own exchanges, the Robinson Pictures Corporation would be considerably handicapped in the type of picture it could produce and distribute, and in the amount it could spend in producing a picture.

Some producers distributed their pictures through the exchange organizations of the larger companies. The president of the Robinson Pictures Corporation did not favor this method for his company because of the tendency on the part of distributors to concentrate largely on the sale of their own product. The product of the independent producer was sold only when there was no possibility of placing the regular line of the distributor. Furthermore, the opportunity for a distributor to allocate smaller portions of a joint sales contract to the independent product was great.

Another unsatisfactory factor in the distributing situation was the difficulty encountered by an independent company in securing Broadway exploitation. Broadway theaters were commonly used by the large motion picture companies as show window theaters in which a new picture was first released. Such exhibition tended

to develop a market for the particular picture. It was said that an exceptional picture, if produced by an independent company, would be unable to derive any revenue from rental in Broadway theaters because those theaters were either unwilling to exploit the picture and pay a rental, or required the producer to expend on advertising an amount equal to or above the rental received. Without Broadway exploitation, a picture had small chance of being sold to the large chain exhibitors. Nearly all the large Broadway motion picture theaters were controlled by producer-distributor companies. Producer-controlled chains, furthermore, purchased pictures on a reciprocal arrangement with other producer-controlled chains. Naturally, the Robinson Pictures Corporation, with a small number of pictures and no theaters, was in a poor trading position and was unable to market its product in the chain theaters. The increasing number of theaters being operated by the large chains constituted a growing menace to the potential market of the Robinson Pictures Corporation.

In 1929, foreign distribution necessitated, in almost all the larger continental markets, a quota, contingent, or permit arrangement under which the films might be brought into the country. Handicapped in its United States distribution, the Robinson Pictures Corporation was unable to afford the high cost of securing rights and permits to distribute in the foreign field.

While considering the production program of the company for the coming 1929–1930 season, the president of the Robinson Pictures Corporation was approached by representatives of a large British motion picture organization with a proposal that the Robinson Pictures Corporation unite with the British company and a German motion picture company to form an international combination. The arrangement called for the formation of a holding company, incorporated in England, the stock of which would be exchanged for stock in the three operating companies.

The president recognized several advantages in such a combination. The addition of feature pictures produced by the two foreign companies, 20 British and 10 German, would provide sufficient product to justify establishing a system of key city exchanges in the United States, provided that comedies, short subjects, and newsreels might be secured for distribution either through production by the producing units of the new company or from other producing companies. Secondly, by virtue of the

increased amount of product, the Robinson Pictures Corporation would be in a better position to sell its films to chain theaters and Broadway "show window" houses. Lastly, the agreement with the foreign companies provided a means of securing entry for Robinson pictures into Germany and the United Kingdom, and the use of international branch exchanges in other foreign countries.

The German motion picture company was engaged in production and distribution and also controlled 182 theaters in Germany. The British firm was a producing and distributing organization controlling no theaters. Each of the foreign companies maintained international exchange organizations. The advantages to the two foreign companies in uniting with the Robinson Pictures Corporation consisted largely of securing a distributing outlet in the United States and the benefits of the more highly developed producing organization maintained by the Robinson Pictures Corporation, including contracts for high-class acting talent.

Separate distributing organizations were to be maintained by the individual companies, with an accounting to the holding company of profits received over and above a percentage allowance for distributing costs. The president of the Robinson Pictures Corporation believed that little difficulty would be encountered in securing additional product in comedies and short subjects to fill out the line for American distribution.

Production plans for the new company called for the making of all-talking pictures. In order that such pictures might be adaptable to exhibition in all countries, it was planned to maintain a joint scenario department in London which would select and approve all stories from which pictures would be made. The pictures would be produced in English or German, with a silent version, or a musically synchronized version for distribution in the countries wherein the dialogue would not be understood. It was further planned to interchange stars and directors in the three producing companies so that a truly international picture might be developed. The cost of producing a picture under the program would be abnormally high, but it was believed that the advantages in distribution would more than offset the additional cost.

The first proposal required that the Robinson Pictures Corporation exchange over 50% of its stock. Because the executives of the Robinson Pictures Corporation wished to retain control of the company, an arrangement was made under which 49% of the

stock of the Robinson Pictures Corporation would be exchanged and the company would receive a payment in cash.

In view of the development in the United States toward large companies in the industry, and a desire to expand the operations of the Robinson Pictures Corporation to provide a more satisfactory distribution, the president of the corporation planned to accept the proposal.

The new company was capitalized at $10,000,000, or approximately five times the average annual combined earnings of the three companies during the preceding five years. The same basis was used in evaluating the stock of the individual companies after an audit of each company had been made by a certified public accountant.

Commentary: The difficulties confronting the Robinson Pictures Corporation were those resulting: first, from the limited number of pictures it was producing; secondly, from its lack of theater control, which restricted the number of outlets available; and third, from its necessary dependence upon state right distribution. It is also suggested that the company's inability to secure Broadway exploitation was a factor, although there is some question as to how serious this may have been. It may be said, however, that a company producing such a limited number of pictures, owning no theaters, and depending upon state right distribution, is today in a most difficult position. The situation would be different were every one of its pictures of outstanding merit. It does not appear from the case that this was true.

Assuming that the description of the company's situation is accurate, there arises the question as to the desirability of accepting the proposal offered it by the British company. The new venture would give to the Robinson Pictures Corporation an increased number of pictures to distribute, thus increasing the chances of securing notable pictures for sale. It would also tend to guarantee the company some sales for its own product abroad. It would, furthermore, increase the volume of product over which the company's expenses could be distributed.

Certain definite objections to the proposal, however, should be noted. It is to be doubted whether the addition of 30 foreign pictures would provide an adequate basis for the establishment of the company's exchanges. There is, after all, only a limited demand for foreign pictures in the United States, and many of those imported by the Robinson Pictures Corporation might possibly find practically no sale at all. Requirements for foreign pictures on the part of such producer-owned theater chains as the Publix Theaters Corporation, would

probably be met by the pictures imported by those companies themselves as a means of maintaining their quota requirements abroad. Such companies, moreover, would be in a position to buy the best of the foreign pictures and hence would be less likely to be attracted by any imported productions offered them by the Robinson Pictures Corporation. Thus it would appear that the company would have a somewhat limited market among the unaffiliated theaters and but little opportunity to sell to the large chain theaters. In the face of such restrictions on its probable volume of sales it is unlikely that it would be able to establish its own exchanges. Under such circumstances the problem of securing the aggressive selling essential to its success would be rendered much more difficult.

The production plans for the new company are interesting. There may be some doubt as to how far they would prove successful. Aside from production costs, which would be very high, admittedly, the success which would follow the establishment of a joint scenario department and presumably joint production is questionable. The proposed use of dialogue pictures introduced the problem of language, the solution of which this company, in common with other producers, would find difficult.

As a temporary expedient, the proposal might well bear careful examination. It is not believed it would prove a solution for the real problems confronting the Robinson Pictures Corporation.

November, 1929 H. T. L.

First National Corporation of Boston

INVESTMENT BANKERS

FINANCE—*Theater Reconstruction Financed through Local Bond Issue.* A corporation operating motion picture theaters desired to finance the reconstruction of one of its units. A group of bankers suggested that a part of the expense should be covered by means of a local bond issue. It was believed that a high price for the bonds could be secured locally because of the public interest and publicity in connection with the opening of the theater, and the fact that in the state of issue, income from mortgage bonds was tax exempt. The corporation accepted the bankers' proposal.

(1928)

Early in 1928, public announcement was made of plans to reconstruct the B. F. Keith Theater of Boston as a modern vaudeville and motion picture theater to be known as the B. F. Keith Memorial Theater. The new theater was so named in recognition of the prominent service rendered the industry of entertainment and amusement by the late B. F. Keith, who had started his business career in the city of Boston. The old theater had presented high-class vaudeville entertainment for many years. The theater building was located between Tremont and Washington Streets, the two main shopping streets of Boston, with an entrance on each street. The leasehold estate was owned by the B. F. Keith Corporation, which also owned two other theaters in Boston and which in turn was a subsidiary of the Keith-Albee-Orpheum Corporation. The Keith-Albee-Orpheum Corporation also owned entire interest in the Greater New York Vaudeville Theaters Corporation, which owned or controlled 18 motion picture theaters in New York City and Brooklyn.

It had been the intention of the Keith-Albee-Orpheum Corporation to fund the expenses of constructing the new theater and placing it in operation by a further issue of bonds previously authorized by the B. F. Keith Corporation. On March 1, 1926, there had been authorized $25,000,000 first and general refunding mortgage 20-year 6% gold bonds, of which $6,000,000 Series "A"

was issued for sale at par. Bonds might be issued in this or other series to acquire properties for theater purposes, for additions and improvements, and for other corporate purposes, provided net earnings for 12 months within 18 months preceding the issue equalled at least 2½ times the interest charges on bonds outstanding and to be issued. Additional bonds on the existing properties, in 1928, could be issued to the amount of $6,735,000. The price range on the Series "A" 6% bonds in 1926 was 100½–96; in 1927, 101–97½; in 1928, 97–88. During the time of the construction of the new theater the price ranged from 92 to 95. The financing had been handled by New York bankers.

In the fall of 1928, a short time prior to the opening of the new theater, the First National Corporation, investment subsidiary of the First National Bank of Boston, suggested to the Keith-Albee-Orpheum Corporation that a part of the financing program for this theater might well be localized in Boston. It was pointed out that such an investment would have a greater appeal in the city where the memorial was placed than in any other city. The public interest in the new theater and the local publicity in connection with its opening would assist in the sale of securities. Furthermore, Massachusetts was one of a few states in which the income from mortgage bonds was tax exempt. It was the belief of the bankers that a new issue of mortgage bonds secured by the Keith Memorial Theater for local sale would command a better price than could be secured for a further issue of the 1926 bonds of the B. F. Keith Corporation.

The First National Corporation had never participated in the financing of theater property, largely because of the specialized nature of the risk. Trust agreements often prohibit the deposit and assignment of mortgages that represent loans on theater buildings. The location of the Keith Memorial Theater in the heart of Boston's shopping district and on the site of the old B. F. Keith Theater was a favorable factor in this instance, however, and the First National Corporation proposed an issue of $1,500,000 first (closed) mortgage 15-year sinking fund 6% gold bonds. The proposal was acceptable to the Keith-Albee-Orpheum Corporation.

In order to place a first mortgage on the leasehold and property of the new theater, it was necessary to free it from previous obligations under the 1926 bond issue. This was accomplished

by transferring the ownership of the Keith Memorial Theater from the B. F. Keith Corporation to the Greater New York Vaudeville Theaters Corporation in exchange for other theater properties of equal value. The Keith Memorial Theater Corporation was organized under Massachusetts laws, therefore, to acquire the leasehold estate with the new theater constructed thereon, and became a subsidiary of the Greater New York Vaudeville Theaters Corporation. With the new issue of bonds, the capitalization of the Keith Memorial Theater Corporation was as follows:

First Mortgage Leasehold 15-year Sinking Fund 6% Gold Bonds	$1,500,000
Preferred Stock, 15,000 shares 7% noncumulative	1,500,000
Common Stock, no par value	10,000 shares

All the preferred and common stock was owned by the Greater New York Vaudeville Theaters Corporation.

The bonds were secured by a direct first (closed) mortgage on a ground lease of land with the new theater erected thereon. The lease extended nearly 40 years beyond the maturity of the bonds. The land was assessed in 1928 for $1,407,800, the book value of which was $2,240,000; the net rent, reserved under the lease, was $87,400 a year to October 1, 1942, and $88,900 to October 1, 1943, included in which was an item of rent of $10,000 a year, for a parcel of land used as the Tremont Street entrance, which might be subject to revision after January 1, 1935. The ground lease was appraised at $500,000; with a lease of so long a term, it was possible to consider the entire value of the building in the appraisal. When the bonds were issued, there remained two months of construction for completion. The cost of the theater at completion with furniture, furnishings, and equipment was estimated at $5,000,000. Construction costs on the new theater to August 31, 1928, amounting to $2,773,471.74, were taken as appraisal value, which, with the leasehold value, gave a total mortgaged property value of $3,273,471.74. Bonds would accordingly be outstanding to the extent of 45.8% of the property value. Massachusetts law limited mortgages to 60% of the appraised value.

In a letter to the First National Corporation of Boston, dated November 9, 1928, the president of the Keith Memorial Theater Corporation stated:

Estimated earnings available for annual interest charges on the issue are $385,600 or over four times such charges, this sum being the estimated annual consolidated net earnings of Keith Memorial Theater Corporation and a wholly-owned subsidiary to which the theater will be subleased for operation, such earnings being determined after payment of rent and all other proper charges, including depreciation but before federal taxes.

The bonds were further secured by the direct guaranty of the Greater New York Vaudeville Theaters Corporation. The balance sheet of this corporation for 1928 is shown in Exhibit 1.

Exhibit 1

Balance Sheet of Greater New York Vaudeville Theaters Corporation and Subsidiary Companies as of August 31, 1928

(As shown by the company's books and adjusted to give effect to Keith Memorial Theater financing)

Assets		Liabilities	
Current Assets		*Current Liabilities*	
Cash	$1,672,408.40	Notes Payable	$ 200,000.00
Accounts Rec. and Accrued	36,020.29	Accounts Payable	28,496.23
		Accrued Taxes, Interest, etc.	165,770.41
	$1,708,428.69	Federal Income Taxes (1927)	47,624.38
		Construction Accounts Payable	573,779.85
Capital Assets			
Land Owned	868,000.00		$1,015,670.87
Buildings and Equipment on Land Owned	1,177,008.18		
Improvements and Equipment on Leased Property	2,927,125.98	*Accounts and Notes Payable to Affiliated Companies*	1,218,185.35
Broadway Theater Leasehold, less amortization	826,245.32	*Rent Deposits and Rent withheld*	43,019.18
Investments in and Advances to Affiliated Companies	482,978.84	*Deferred Notes Payable*	550,000.00
		Funded Debt	
Other Investments and Deposits	196,696.88	Keith Memorial Theater	1,500,000.00
		Real Estate Mortgages	35,450.00
Deferred Charges	196,315.78	*Capital Stock and Surplus*	
		Capital Stocks:	
		Preferred (nonvoting) 8% Cum.	550,000.00
		Preferred (voting) 8% Cum.	50,000.00
		Common Authorized, 10,000 Shs. of $100 each, $1,000,000 Issued..... 3,600	360,000.00
		Surplus from Appraisal	2,417,348.12
		Profit and Loss Surplus	643,126.15
	$8,382,799.67		$8,382,799.67

No provision has been made for the cost to complete the Flushing and Memorial Theaters which are under construction except as shown.

Contingent Liability in respect of note receivable discounted $61,000.

The earnings of the Greater New York Vaudeville Theaters Corporation, excluding net earnings from properties no longer held,

for the period 1923 to 1927 inclusive, as certified by accountants, after depreciation but before federal taxes, were as follows:

Year ended December 31	
1923	$210,567.61
1924	376,110.13
1925	236,562.86
1926	317,112.43
1927	205,364.65
1928 to August 31—*Net Loss*	47,526.22

In explanation of the above statement of earnings, the president of the Keith-Albee-Orpheum Corporation stated that during the first eight months of 1928 the company had been instituting certain changes in its policy of entertainment which it expected would show a beneficial effect during the last quarter of 1928, and would mean a marked increase in earnings in the years to follow. The decrease in annual earnings in 1927 was explained by decreased revenue as a result of unseasonal weather during the summer months and on holidays, and by increased expenses during the developmental period of newly merged theater properties of the Greater New York Vaudeville Theaters Corporation.

Changes in the company's policy of entertainment during 1928 included the substitution of a combination vaudeville and motion picture program for an all-vaudeville program, an agreement with the Radio Corporation of America by which the company's vaudeville stars were utilized in the production of talking and sound pictures and in national radio broadcasting, and the installation of sound synchronizing reproducing equipment (RCA Photophone) in the company's theaters.

The president stated further that the average annual earnings, after giving effect to transfers of certain properties incidental to the acquisition of the Keith Memorial Theater and including an estimate by the Keith-Albee-Orpheum Corporation of the earnings to arise from this and other acquisitions, would equal $840,692.61, after depreciation but before federal taxes and interest on these bonds.

In evaluating the above statement of earnings, the bankers placed great reliance on the judgment and experience of the executives of the Keith-Albee-Orpheum Corporation as a basis for estimating the future prospects of the theater and for developing a successful program of operation. No attempt was made to

secure an independent evaluation of the management. The recent success of the Fox Film Corporation and of Warner Bros. Pictures, Inc., in the production of sound pictures, was indicative of the rapid development of this field, in which the Keith-Albee-Orpheum Corporation was favored by its connection with the Radio Corporation of America, one of the largest interests in the field.

The Keith Memorial Theater, being newly furnished and well located, was considered by the bankers to be in an excellent competitive position in relation to the other motion picture theaters of the city.

The mortgage indenture provided for a sinking fund, commencing in 1930, sufficient to retire each year the following amounts of bonds:

1930 and 1931	$60,000 each year
1932 to 1934 inclusive	70,000 " "
1935 to 1939 "	80,000 " "
1940 to 1942 "	90,000 " "

Cash deposited in the sinking fund was to be used for the purchase of bonds in the open market below the current redemption price, or, if not so obtainable, through call by lot at the current redemption price on or before August 1 of each year. The operation of the sinking fund would retire 66⅔% of the issue at or before maturity.

The new issue was offered to the public in November, 1928, at 100 and interest with delivery in the form of temporary bonds. The bonds were redeemable as a whole or in part on any interest date, upon 60 days' notice, at 105 and interest on or before November, 1933; the premium thereafter decreased by ½ of 1% for each additional year to maturity.

Commentary: In the face of the successful flotation of the bond issue referred to in this case, it is perhaps questionable to raise any doubt as to the wisdom of the venture.

On the surface, every argument would suggest success. The proposed theater occupied an excellent location. The plan called for the erection of a beautiful building. The goodwill attached to the company in the past should prove an asset. From the point of view of the local bank, the endorsement of the Greater New York Vaudeville Theaters Corporation was an element of strength. The appeal to local pride in the selling of the bonds perhaps had some value.

On the other hand, a theater is a building which can be used for entertainment purposes only. Moreover, the motion picture and

vaudeville businesses are of a highly specialized character, and the First National Corporation of Boston had had no experience in these fields. It had little or no knowledge of theater problems. It had never participated in the financing of theater operations; yet it was the First National Corporation which proposed to the Keith-Albee-Orpheum Corporation that the financing be done locally. The reasons for this proposal are not indicated directly but may be surmised.

It was believed by the First National Corporation that the proposed program of operation promised substantial success, although no attempt was made to secure an independent evaluation of the management. It is to be noted that the Keith-Albee-Orpheum Corporation in 1928 had instituted substantial changes in its policy of entertainment which had resulted in a net loss by the Greater New York Vaudeville Theaters Corporation of over $47,000 during the first eight months of that year. The subsequent history of the B. F. Keith Memorial Theater program policy also raises some question as to the validity of the bankers' belief in this policy. In the spring of 1929, it was again found necessary to revise thoroughly the program policy. This revised policy was continued for only three months, after which it was changed once more. These changes would suggest that the proposed program was not so successful as had been anticipated. The soundness of this financing venture obviously depended upon the box office value of the program policy. The determination of such a policy requires the good judgment of thoroughly qualified men. The soundness of the loan depended upon the ability and experience of these men rather than upon the value of the building itself, which was, after all, not adaptable to any use other than that of a theater. All this tends to emphasize the highly specialized character of the motion picture business and the wisdom of a bank in exercising extreme caution before engaging in any form of motion picture financing.

November, 1929 H. T. L.

Prior & Reardon, Incorporated

FINANCE COMPANY

Finance—*Production Financed by Loan from Bankers.* A financing corporation received a request from a motion picture producer for a loan against a new production. On the basis of the past records of the producing company, together with the reputation of the stars and director of the proposed picture, the financing corporation decided to make a loan, which was paid when due, the picture having proved to be a success. (1925)

In 1925, the firm of Prior & Reardon, Incorporated, was approached by Mr. T. S. Maurice, a producer of motion pictures, for assistance in financing a feature production. It was necessary for the company to determine whether the loan should be granted and if so upon what terms.

Prior & Reardon, Incorporated, was organized in 1924 to engage in financing various activities in the motion picture industry. The original capital consisted of $100,000 contributed in equal parts by Messrs. Prior and Reardon, who previously had loaned personal capital to motion picture producers. The company planned to make loans, on collateral, on producers' past or contemplated productions, rehypothecating such loans with banks. Subsequently the company issued common and preferred stock for the purpose of raising additional capital to the amount of $3,000,000.

Mr. Maurice, president of Maurice Productions, Incorporated,[1] planned to produce a feature picture at a cost of approximately $500,000. The picture was to be distributed through the Carleton Pictures Corporation.[1] A loan to Maurice Productions, Incorporated, for the full cost of production was requested. The loan would be made to the corporation and endorsed by Mr. Maurice, personally.

As security for the loan the producer offered to assign a contract with the Carleton Pictures Corporation, authorizing the

[1] Fictitious name.

production of the feature picture built around a cast and story approved by the distributor. Under the terms of the contract, Maurice Productions, Incorporated, was to receive 75% of the gross receipts from the picture after advertising expense and the costs of printing positives had been met. The maximum for advertising expenses on the picture had been set at $15,000; a similar maximum allowance of $12,500 had been agreed upon for the cost of printing. In addition to the assignment of contract, the producer would assign insurance policies on the lives of two stars cast for the picture, and a fire insurance policy covering the two negatives while in course of production. A chattel mortgage on the negative and all positive prints would further insure Prior & Reardon, Incorporated, against loss. It was common practice for banks to hold the negative of a picture as security for loans made to a producer until payment was forthcoming from the distributor to whom the negative was to be delivered.

As a check on the quality of the production, Prior & Reardon, Incorporated, first examined the story which had been selected by the producer and approved by the distributor. The plot was a love story, simple, but well adapted to the type of romantic picture that was popular at the time. The two stars, male and female leads, had recently entered into contracts with the producer. The actress was of foreign nationality with experience in European productions; the actor had been trained by the producer. As co-stars in two pictures they had been received with popular appreciation, and the producer believed that this popularity represented a strong box-office appeal for the new production.

The director was a leading one in the industry, with considerable experience and success in the making of romantic pictures of the type contemplated. He was favorably regarded not only for his competent direction but also for his ability to keep production expenses within the prepared budgets. The balance of the cast was considered relatively unimportant and the lending corporation relied upon the judgment of the producer in the selection of these actors.

In order to determine the financial standing of the producer, Prior & Reardon, Incorporated, requested Mr. Maurice to furnish a financial statement. Exhibit 1 shows the financial statement of Maurice Productions, Incorporated, as of December, 1924.

Exhibit 1

Financial Statement of Maurice Productions, Incorporated, as of December, 1924

Assets

Cash on Hand and in Bank	$ 27,028
Accounts Receivable	34,373
Notes Receivable	2,542
Negatives and Positives not Released (at cost)	560,607
Deferred Charges	6,438
Materials and Supplies	4,783
Story Rights and Scenarios Unproduced (at cost)	67,925
Equipment	53,545
Cash Surrender Value Life Insurance Policies	2,335
Prepaid Expenses	1,620
Contracts with Stars	250,000
	$1,011,196

Liabilities

Notes Payable	$ 420,680
Accrued Interest	6,340
Provision for Federal Income Taxes	12,500
Accounts Payable	44,823
Capital Stock	400,000
Surplus	126,853
	$1,011,196

The lending company realized that this statement was of little value to it in determining whether to make the loan, however, as the financial condition of a producer was largely dependent upon the type of pictures which he had recently produced. A statement of earnings during the past six months was considered sufficient as a measure of determining the value of his endorsement.

An investigation of the distributing company disclosed that it was one of the largest in the field, with 32 exchanges located in the principal key cities of the country. The Carleton Pictures Corporation had been formed in 1921 and had since acquired an interest in a number of theaters, including two of the largest theaters on Broadway. Its pictures were recognized to be of leading quality. Its costs of distribution were less than those of other distributing companies because the quality of its pictures made them easy to sell. The company sold a limited number of pictures on an individual basis. A financial statement of the distributing company was required, as Prior & Reardon, Incorporated, was interested in this company's financial capacity to distribute the product.

The Carleton Pictures Corporation estimated the distribution value of the proposed production to be approximately $1,300,000. This estimate was of little value, however, to Prior & Reardon, Incorporated, as it was impossible to forecast the popularity of a picture prior to its release. Receipts from the picture after release were expected to accumulate at the rate of 30% of the total value in the first three months, 60% at the end of six months, and 90% at the end of a year. Prior & Reardon, Incorporated, would be given the right to examine the books of the distributor at any time. With a knowledge of motion picture distribution, this privilege would enable the lending corporation to check the receipts of the particular picture, and to protect its rights in the incoming revenue. The producing company's share of the receipts would be remitted directly to Prior & Reardon, Incorporated. It was estimated that the entire loan would be liquidated within six months after the release of the picture.

The funds required by the producer would necessarily be advanced in weekly installments as specified in a cost budget prepared for the production. Approximately three months would be necessary in which to complete the picture as planned. As each installment was needed, the producer would submit, for the approval of the lending corporation, vouchers substantiating payments to be made during the following week.

Prior & Reardon, Incorporated, seriously questioned the wisdom of granting the loan. In the first place, the amount was larger than it had been accustomed to lend on individual productions. Previous loans had not exceeded $200,000 per picture. If the producing company failed to produce a good picture, the distributing company would be unable to secure a satisfactory market. Motion picture negative was of little value to a company without distributing facilities. Motion pictures deteriorated more rapidly than most merchandise. Expensive productions often failed to return average gross receipts, and inexpensive pictures often returned more than average. It was possible in this instance that the receipts might not equal the cost of production.

On the other hand, the executives of the lending corporation had confidence in the ability of Mr. Maurice to produce high-quality pictures with a box-office appeal. His record of successful productions attested that fact. Moreover, the selection of stars

and director was favorable. Most important, however, was the position of the distributing company in the industry, and its assured outlets in exhibition. In view of these favorable circumstances, the corporation decided to grant the request for a loan. It did not wish, however, to assume a risk of the full cost of production.

The corporation offered to lend Maurice Productions, Incorporated, up to 75% of the cost of the proposed production, with the provision that the loan should not exceed $375,000. In this way the corporation was protected against expenditures in excess of the cost budget. Any expenditures in addition to those planned at the time of the contract would be met entirely by the producer and would therefore receive most careful consideration. The corporation believed it desirable to have a representative at the Hollywood studios of the producer for the purpose of approving production cost vouchers.

The rate of interest was set at 6%, to be figured on outstanding balances, but in view of the expense in connection with checking the progress of production and the liquidation of the loan, an additional service charge of $15,000 was requested. The loan was to be repaid in full one year from the date of the first installment.

The terms were satisfactory to the producer, and the loan was made. The assignment of contract was acknowledged by the producer and distributor and a further assignment of all rights in the literary material was also obtained. Insurance policies on the lives of the star actor and star actress were taken out by the producer to the amount of $100,000 and $200,000 respectively. A "negative film floater" fire insurance policy, which covered the negative at all stages of production and at any place, was written at the time production was started. Under the terms of this policy, the lending corporation would be reimbursed for all amounts advanced up to the time of the loss. This policy would remain in effect until 100 positive prints had been struck off. After the positive prints were made, two copies of the negative were filed in separate vaults.

The picture proved to be a success, with gross receipts in excess of $1,500,000, and the loan was entirely paid prior to the date of expiration. The producer planned a series of three similar productions with the same stars under different direction,

and requested new loans to the full amount of the cost of production.

Commentary: This case describes a method of operation of a motion picture financing corporation. In the main, it may be said that such financing companies had a place at one time far greater than they subsequently enjoyed. In more recent times, producing companies have been able to finance a larger portion of their pictures out of earnings. The willingness of certain banks to engage in this form of finance has also created a substantial change in the situation. With this increasing financial strength of the companies themselves, combined with the willingness of the banks to cooperate, the place of the motion picture financing companies has become steadily less important.

One should note the value placed by Prior & Reardon, Incorporated, upon the director and upon the producer. The real risk in the case is to be found in these two individuals, although the importance of the stars is not to be underemphasized. The specific protection offered by Maurice Productions, Incorporated, to Prior & Reardon, Incorporated, was necessary and desirable but was, after all, wholly secondary to the personal qualifications and abilities of those in charge of the direction and production of the picture.

All in all, it may be said that, although this venture on the part of Prior & Reardon, Incorporated, was an evident success, it is a form of financing that has proven extremely speculative for those engaged in it.

November, 1929 H. T. L.

Randolph Trust Company[1]

BANK

Finance—*Production Loans with Appearance of Permanent Capital Discontinued by Bank.* A commercial bank, learning that one of its clients, a motion picture producing company, had borrowed to the limit of its credit on all its pictures, advised the producer to seek new banking connections. The producing company, realizing the wisdom of the bank's unwillingness to approve further loans, requested the assistance of the bank in securing the interest of an investment banking house in the sale of a small issue of stock as a means of raising permanent capital. (1929)

In an examination of outstanding loans to motion picture companies on March 1, 1929, the vice president of the Randolph Trust Company gave considerable attention to the credit account of Talley Productions, Incorporated.[1] An original loan of $20,000 made in June, 1926, had been followed by additional loans until there had been established a credit line of $400,000 against which loans to the full amount had been outstanding since June, 1927. The vice president considered the advisability of closing out the credit account of Talley Productions, Incorporated.

The Randolph Trust Company, with uptown and downtown offices in New York City, had made loans to motion picture producers for a number of years. An assistant vice president, familiar with the industry, had specialized in theatrical and motion picture accounts. Prior to 1925, a loan was granted to a producer on security afforded by the assignment of a contract between that motion picture producer and a distributor whereby the producer received an amount, known as "negative advance," upon the delivery of the negative, or whereby the producer and the distributor shared in percentages of the gross receipts from the rentals secured. After the development and merger of large producing and distributing companies, the financing of productions was largely accomplished by such companies with financial assistance from banks in the form of unsecured credit.

[1] Fictitious name.

The Randolph Trust Company extended a line of credit to a motion picture company in a manner similar to the granting of credit to other industries. A request for credit was accompanied by balance sheets, income statements, and a statement of the purpose for which the credit was desired. A careful analysis of the management and its ability to produce and distribute good pictures was made by the bank, with particular emphasis on the competitive position of the company. A deposit balance of 20% of outstanding loans was required. The borrowing company was also required to clean up its loans once yearly. This requirement was not difficult to fulfill, as motion picture companies ordinarily borrowed during the early months of the production season and liquidated their loans from rental revenue received prior to the beginning of a new season. Production for the new season ordinarily began on June 1, and was heaviest during the first and second quarters thereafter. The selling season also opened about June 1, with largest quarterly receipts incoming during August, September, and October. By April most companies had repaid the loans contracted for the past production season, and there were few loans to the motion picture industry outstanding during the months of April and May in any year.

Talley Productions, Incorporated, was formed in 1924, to make the productions of Thomas Talley, a famous screen comedian with years of experience in motion pictures. Since 1926, the company had held a contract with one of the largest distributing companies whereby it was to produce annually 40 two-reel comedies at a cost not to exceed $30,000 each. Under the terms of the contract, Talley Productions, Incorporated, was to receive 75% of the gross rentals after advertising and "printing" costs had been recouped by the distributor. By "printing" is meant the striking off of the positive prints from the negative. The amount to be expended for advertising and printing was limited by the contract. The costs of these items ordinarily did not exceed 5% of the production cost.

Talley comedies were particularly entertaining and received as large a distribution as any comedies produced. They were "slapstick" in nature and placed more emphasis upon "gags" than subtlety of plot or situation. The company had developed a strong corps of star comedians with an established popularity in the minds of motion picture fans. The average cost of a picture

was approximately $25,000; pictures grossed on the average $50,000, which left an attractive margin of profit above costs of distribution. Late in 1928, the company had made an agreement with the manufacturer of a sound recording device whereby certain productions would be released with sound effects and dialogue. While it was not at all unlikely that the distributing company would become involved in the general trend of motion picture company consolidation, it was believed that Talley Productions, Incorporated, would never be at a loss to secure a favorable contract for the distribution of its films.

The vice president of the Randolph Trust Company was satisfied that the risk incurred in making loans to Talley Productions, Incorporated, was more than ordinarily low. The bank was lending not more than 80% of the cost of each picture. All loans in the past had been readily liquidated from the distributor's receipts within eight months from the time the funds were advanced. The bank was receiving about $20,000 per week from the distributing company. No effort had been made to keep informed as to the financial position of Talley Productions, Incorporated, since 1927, but it was believed, from information gained from trade sources, that the corporation was prosperous.

The account, however, was not particularly profitable to the bank. Loans to the corporation drew interest at the rate of 6% without bonus or service charge. It was common practice for banks and credit companies either to charge a higher than usual rate of interest or levy a service charge when extending credit to motion picture companies. Considerable work was necessary in handling the credit account, as each of the 40 production loans required a separate record, an assignment of contract, an assignment of fire and life insurance policies, an acknowledgment of assignments, and a record of distributor remittances. The handling expense was abnormally high in comparison with that of other credit accounts in the industry and in other industries. The same amount of credit divided among other motion picture companies might be more profitable to the bank, as the expense of carrying three or four new accounts would be less than the expense of the Talley account; furthermore, the Randolph Trust Company would have established relationships with new accounts that might be extremely valuable in the future.

The vice president did not look with favor upon a credit account which was never clear and which was always extended to the limit of the line. In his opinion, the credit account of Talley Productions, Incorporated, had assumed the aspects of permanent capital, since the liquidation of outstanding loans on old productions was continually offset by the making of new loans on planned productions. He believed it advisable for Talley Productions, Incorporated, to establish new banking connections. Later, the line at the Randolph Trust Company might be reestablished. In order that the producing company might not be inconvenienced during the current production year, it was planned to continue making loans until May 1, 1929, a time at which new lines were commonly arranged. All loans outstanding at that date would have been liquidated by December 1, 1929.

The decision to close out the credit line was communicated to the president of Talley Productions, Incorporated, who stated that he was in accord with the point of view of the bank, and requested its assistance in securing the interest of an investment banking house in the sale of a small issue of stock. The larger part of this issue of stock would be taken up by the owners of the corporation.

COMMENTARY: The decision of the bank in this instance was undoubtedly sound. The question was no longer one of merely financing individual pictures but rather one of providing capital of a permanent character for a going business. Talley Productions, Incorporated, represented a company with an established place in the industry producing pictures for which there was a fairly definite and continuing demand. It was not reasonable to expect its financial requirements to be met in the same manner as they had been when the company was small and more or less unknown, and when its future was still somewhat problematical.

It should also be noted, aside from the principle of the case, that the account was not a particularly profitable one to the bank.

Incidentally, the intimate familiarity on the part of the Randolph Trust Company with the motion picture business justified the bank's engaging in this form of finance. In this regard there is a sharp contrast between the situation in the present case and that in the case of the First National Corporation of Boston.[2]

November, 1929 H. T. L.

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[2] See First National Corporation of Boston, page 39.

Dalton Trust Company[1]

BANK

Finance—*Line of Credit Refused Producer Because of Decline in Quality of Product.* A commercial bank was asked for a line of credit by a corporation producing motion pictures. Investigation revealed that the past financial records of the producer were very satisfactory but that present and future trade relations were unfavorable since the popularity of the corporation's product was decreasing. The line of credit, therefore, was refused.

(1928)

In January, 1928, a vice president of the Dalton Trust Company was approached by the treasurer of the Trojan Pictures Corporation[1] for a line of credit amounting to $750,000. The purpose of the credit was to finance forthcoming motion picture productions.[2]

The Dalton Trust company, located in New York City, was one of the first banking institutions to engage in financing motion picture production. Prior to 1924 it had been the custom of the Dalton Trust Company to make loans to producers upon the assignment of a contract with a distributor. Such loans were liquidated through the payment by the distributor to the bank of an amount agreed upon by the producer and distributor as forthcoming upon the delivery of the negative by the producer; or through payment to the bank by the producer from his percentage share of the receipts from distribution. After 1924, however, as larger companies were formed to take over both the production and distribution of pictures, there was less necessity for the financing of individual productions and the bank had made it a practice, therefore, to grant lines of credit to such companies at the beginning of the production season. Loans against the line of credit were commonly liquidated when the distributor was securing rentals from exhibitor contracts. Most motion picture companies were free of bank loans by the month of March.

[1] Fictitious name.
[2] See Randolph Trust Company, p. 52; Prior & Reardon, Incorporated, page 46.

The Trojan Pictures Corporation had never borrowed from the Dalton Trust Company. At the time of the request the company had outstanding lines of credit with four other New York banks.

The Trojan Pictures Corporation, established in 1921, was one of the 10 largest companies in the industry, with studios in Hollywood and New York City and distributing offices in New York City. Its sales organization included 30 exchange offices located in various cities of the United States, each of which served a definite sales territory. The company sold to all classes of exhibitors. It also maintained foreign exchanges in five European countries. Approximately one-fourth of its total sales were made in the foreign market. In 1927, the Trojan Pictures Corporation had secured control of a large chain of small theaters located in the Middle West. It was also affiliated with a number of other theater circuits which served as outlets for its films.

In submitting its request, the Trojan Pictures Corporation made reference to its banking relations, and presented its balance sheet as of December 31, 1927, with comparative statements for the period 1925–1927, as well as comparative statements of its income account for the preceding four years. Exhibits 1 and 2 show the balance sheets and comparative statements of the corporation.

The vice president of the Dalton Trust Company made inquiry of the four banks from which the Trojan Pictures Corporation had borrowed, and received very satisfactory reports on the company's credit. The largest bank replied, "We have extended the Trojan Pictures Corporation credit to the extent of $350,000 for the past two years. We feel that the condition of the company's business is secure and wish to call attention to the steady earnings during the past few years. We should be glad to increase our line to $500,000 on the basis of the company's current position." A second bank said that in its opinion the Trojan Pictures Corporation was entitled to a further extension of its line of credit. The third and fourth banks commented solely on satisfactory past dealings with the company.

An analysis of the company's balance sheet showed a ratio of current assets to current liabilities in excess of four to one. Dividends on the 8% preferred stock had been met quarterly since 1923. The company had adopted a liberal policy in writing off its inventories, having depreciated its releases at the rate of 30% during the first month, 60% during the first six months, and

Exhibit 1

Comparative Balance Sheets of Trojan Pictures Corporation as of December 31, 1925–1927

Assets	Dec. 31, 1927	Dec. 31, 1926	Dec. 31, 1925
Land, Leases, Equipment, etc.	$ 3,645,240	$ 3,154,620	$ 4,291,260
Investment in Associated Companies	1,962,480	1,033,410	536,130
Contract Deposits	408,258	328,227	329,004
Advances	329,004	741,258	335,420
Securities	....	246,420	226,440
Inventories	10,135,741	9,439,047	8,703,300
Cash	977,244	1,174,380	835,497
Notes Receivable	35,187	31,213	36,390
Accounts Receivable	1,609,570	1,076,760	1,365,300
Deferred Charges	720,279	633,810	382,506
Total Assets	$19,823,003	$17,859,145	$17,041,247
Liabilities			
Preferred Stock	4,958,300	5,270,300	5,417,900
Common Stock	4,632,030*	4,632,030*	4,632,030*
Mortgage Loans	560,000	572,060	1,042,610
Notes Payable	1,047,618	639,360	954,820
Accounts Payable	1,781,557	1,570,650	1,757,023
Advances	422,460	571,190	511,714
Reserve for Taxes	438,700	418,270	377,500
Surplus	5,982,338	4,185,285	2,347,650
Total Liabilities	$19,823,003	$17,859,145	$17,041,247

* Represented by 275,000 no par shares.

Exhibit 2

Comparative Consolidated Income Account of Trojan Pictures Corporation, 1924–1927

	Years Ended			
	Dec. 31, 1927	Dec. 31, 1926	Dec. 31, 1925	Dec. 31, 1924
Film Rentals and Sales	$31,784,858	$30,705,932	$27,550,226	$25,784,694
Operating Expenses	29,526,511	28,471,406	25,339,087	24,181,242
Net Operating Income	$ 2,258,347	$ 2,234,526	$ 2,211,139	$ 1,603,452
Other Income	198,246	229,559	200,244	156,398
Total Income	$ 2,456,593	$ 2,464,085	$ 2,411,383	$ 1,759,850
Federal Taxes	438,700	418,270	377,500	269,619
Balance	$ 2,017,893	$ 2,045,815	$ 2,033,883	$ 1,490,231
Preferred Dividends	234,210	248,862	196,248	142,413
Surplus	$ 1,783,683	$ 1,797,053	$ 1,837,635	$ 1,347,818
Earnings per share Preferred	35.90	34.10	33.92	24.87
Earnings per share Common	6.48	6.53	6.64	4.90

90% during the first year. After a picture had been released 18 months its value was placed on the books at $1.

As a further check, the bank desired to obtain the trade position of the Trojan Pictures Corporation. It endeavored to secure a trade check-up by making inquiries of various influential and well-informed producers, distributors, and exhibitors in Hollywood, in New York City, and in large exchange centers. From these sources it learned that the quality of the Trojan pictures had materially fallen off during the current year. It was reported from sales territories that the current pictures were receiving lower rentals than the company ordinarily obtained, because of the difficulty experienced in their sale. Distributors reported decreased box-office receipts from the chain of theaters operated by the Trojan Pictures Corporation. It was pointed out that the company, by reason of its poor pictures and its weak chain of theaters, was in an unfavorable trading position with other distributors.

Inasmuch as the prosperity of a motion picture company was dependent upon the popularity of that company's pictures, the bank hesitated to extend a line of credit to a company which had an unfavorable reputation in the trade. The fact that the Trojan Pictures Corporation wished to open a new line of credit so late in the production season was also unfavorable. The vice president of the Dalton Trust Company refused to grant the credit. In commenting on his decision, the vice president emphasized the importance of trade information in the financing of the motion picture industry.

Commentary: The decision of the Dalton Trust Company in refusing to extend a line of credit to the Trojan Pictures Corporation was sound. In favor of the loan it could be pointed out that the Trojan Pictures Corporation was an old, established company. It had established a line of credit with four other banks. No unfavorable report was received from any one of these four banks in response to the inquiry directed to them by the Dalton Trust Company. Examination of the balance sheets and of the income account would indicate that the company was apparently in sound condition.

On the other hand, the fact that the company already had four outstanding lines of credit might well raise the question as to whether these were not excessive for a company of the size of the Trojan Pictures Corporation. In any event, it would seem that if the company were

entitled to additional credit it should be able to get that credit from one of its former connections instead of approaching a fifth bank. It may be noted also that two of the former banks commented solely upon past relations with the company.

What is more important than either of these facts, however, is that the results of the trade check-up by the vice president of the Dalton Trust Company were distinctly unfavorable. Reports from sales territories revealed lower rentals. Distributors reported decreased box office receipts from Trojan theaters. The quality of the pictures had fallen off materially. There is a suggestion that the company's chain of theaters might be more of a handicap than an asset.

The wisdom of making such a check-up is above question. The fact that the vice president of the Dalton Trust Company appreciated that such reports were more important in many ways than financial statements of current conditions shows true appreciation of the factors constituting real strength in the motion picture industry. The desirability of making a trade check-up to supplement submitted financial statements is clearly recognized in most industries, but certainly in few other industries is such information of greater significance than in this one.

November, 1929 H. T. L.

Gilmore, Field and Company[1]

INVESTMENT BANKERS

Finance—*Exhibition Expansion Provided through Issue of Preferred Stock.* An investment banking firm was asked by a motion picture corporation for financial assistance in the expansion of its exhibition facilities in 1919. A survey of the motion picture industry was made by the investment bankers, with special emphasis on the relation of this corporation to the industry and to possible future developments. As a result of this survey, the banking firm agreed to join a bankers' syndicate to be formed to finance the company through the issue of cumulative convertible preferred stock.

(1919)

In 1919, a partner in the firm of Gilmore, Field and Company was approached by the president of one of the largest motion picture companies, the American Pictures Corporation,[1] for financial assistance. Prior to 1919, the American Pictures Corporation had made no arrangements with investment banking firms, previous permanent financing having been made from earnings and private capital. Planned expansion in the field of motion picture exhibition necessitated new financing on a larger scale than was possible with the old arrangement.

Gilmore, Field and Company, a Wall Street investment banking firm, was engaged in financing public utility and industrial companies. The firm had become established in the financial world as underwriters of high-grade securities. A majority of the issues which it originated were public utility, foreign civil, and domestic industrial bonds. Opportunities to finance the more speculative enterprises had been rejected as a matter of policy.

The American Pictures Corporation presented its financial statement. The president supplemented the statement by calling attention to the corporation's record of high-quality production, its large distributing organization, and the past earnings. He also pointed out the necessity for securing theaters in key locations

[1] Fictitious name.

in order to protect the producing and distributing activities of the business.

The bankers were interested in the proposal but desired to have more information on the industry as a whole, and the American Pictures Corporation in particular. They requested, therefore, a survey by an investigating corporation. The following information is based on the survey prepared for Gilmore, Field and Company.

The survey of the industry as a whole included a description of the activity of the three divisions, production, distribution, and exhibition; a comparison of the gross yearly income from motion pictures and other large industries; the number of producing companies; and a statistical analysis of the growth and permanency of the industry.

Reliable statistics were difficult to compile, as few were available. The index of the development of the industry considered most reliable was the amount of film stock, both positive and negative, sold to the producing companies. Weekly sales of positive film stock had increased from 3,000,000 feet in 1913 to 10,000,000 feet in 1919; weekly sales of negative stock were 500,000 feet in 1913 and 1,650,000 feet in 1919. Exhibit 1 shows the rate at which unexposed film had been exported during the period 1913–1918.

Exhibit 1

Exports of Unexposed Film, 1913–1918

Year	Average Weekly Exports	Total Annual Exports
1913	799,000 feet	41,531,004 feet
1914	2,987,000 "	155,359,550 "
1915	2,211,000 "	115,067,424 "
1916	1,390,000 "	72,298,993 "
1917	951,000 "	49,486,415 "
1918	1,115,000 "	57,995,064 "

Another index to the growth of the industry was the sale of projection machines. The approximate sales of Simplex projection machines, the most commonly used motion picture projector, from 1912 to 1920 were as follows:

1912	1,000 machines
1913	1,500
1914	2,000
1915	3,000
1916	3,300
1917	2,500
1918	2,700
1919	4,000
1920	5,000

The increase in the number and circulation of the so-called "picture fan" magazines indicated a growing public interest in motion pictures. The circulation of the leading magazines had increased as shown in Exhibit 2.

Exhibit 2

Circulation per Issue of Motion Picture Magazines, 1916–1919*

	1916	1917	1918	1919
Photoplay Magazine	100,000	199,272	204,434	No record
Motion Picture Magazine	200,000	241,223	248,845	400,000
Motion Picture Classic	....	153,000	140,000	275,000
Picture Play Magazine	....	....	127,721	200,000
Photoplay Journal	....	....	100,000	No record
Shadow Land	Not published		....	75,000
Totals	300,000	593,495	821,000	950,000

* Source: *American Newspaper Annual and Directory.*

The investigating corporation in appraising the permanence of the industry stated that permanency depended upon the demand of the public both in this country and abroad, and that this demand in turn depended upon the ability of the motion picture producers to turn out a product that would continue to satisfy the appetite of the public for this form of amusement, and also upon the creation of additional non-theatrical demands for the use of pictures in educational and scientific fields. It was necessary to consider the three sources of revenue: American theaters, foreign theaters, and non-theatrical exhibitors.

Various estimates of the number of theaters in the domestic trade varied from 14,000 to 21,000, but the most reliable data were those of the distributing department of the American Pictures Corporation, which were based on an annual survey through its exchange organization. Estimates submitted by the distributing department showed that there were in 1919 about

15,000 picture theaters with an aggregate seating capacity of over 8,000,000; they might be divided into 4 classes, according to average admission charge:

Average Admission	Number of Theaters	Average Seating Capacity
10 cents	4,100	300
15 "	6,000	450
18 "	2,400	600
25 "	2,500	1,100 and over

The distributing department estimated the total annual income of motion picture theaters in America at $675,000,000 for the theatrical year ending August 31, 1918, with a probable increase to $800,000,000 for 1919 because of greater attendance and higher admission charges.

Of the 15,000 theaters, 160 were reported to the distributing department as leasing pictures for a week's run, 2,500 as leasing for one-half week; and the remainder (82%) as leasing for daily change of program. The number in the week's run class was expected to reach 200 by the end of the year. Such an increase would materially increase the revenue as it would mean more first-run houses, where film rentals were greater than in other theaters. The weekly rental charges for a picture released in New York by the American Pictures Corporation varied as follows: first run $3,000, second run $700, and third run $420.

The rate of increase in film rentals or prices charged to the exhibitor, based on the year 1916–1917 as 100%, had been as follows:

1916–17	1917–18	1918–19	1919–20
100%	200%	250%	375%

The theaters had in turn increased the price of admission to the public. Admission prices in 1919–1920 represented a 25% increase over the prices of the previous year. Attendance at motion picture theaters had continued to increase. Exhibit 3 indicates the increase in box office receipts at eight large theaters, located in New York and other cities, from 1916 to 1919.

EXHIBIT 3

BOX OFFICE RECEIPTS IN EIGHT THEATERS, 1916–1919

Theater	Period	Receipts	Period	Receipts	Per Cent of Increase
No. 1..........	June–Aug. 1916	$103,600	June–Aug. 1917	$157,900	52.4
	June–Aug. 1917	157,900	June–Aug. 1918	160,800	1.8
	June–Aug. 1918	160,800	June–Aug. 1919	195,300	21.5
No. 2..........	June–Aug. 1918	155,900	June–Aug. 1919	185,100	18.7
No. 3..........	June–Aug. 1918	76,100	June–Aug. 1919	93,100	22.3
FORMERLY MOTION PICTURES AND VAUDEVILLE					
No. 4..........	Apr.–May 1918	28,600	Apr.–May 1919	31,100	8.7
No. 5..........	Apr.–May 1918	35,500	Apr.–May 1919	39,100	10.1
No. 6..........	Apr.–May 1918	32,200	Apr.–May 1919	42,600	32.3
No. 7..........	Apr.–May 1918	28,000	Apr.–May 1919	34,200	22.1
No. 8..........	Apr.–May 1918	14,100	Apr.–May* 1919	22,900	62.4

* Closed last five days of May.

The increase was attributed to the interest in motion pictures engendered by the war, and the closing of the saloon.

The investigating corporation believed that the growth of attendance was permanent and that further growth would be probable by reason of more attractive amusement with a better class of films and the addition of good orchestral music. An examination of the trade papers indicated an unusual amount of theater building and substantiated an estimate of the American Pictures Corporation that 1,200 new theaters at an estimated average cost of $60,000 each were under construction. This new construction would, it was believed, result in a reduction of the total number of theaters operating in the country, with an increase, however, in the total seating capacity. A theater with a larger seating capacity was at a financial advantage because the larger items of operating expense—management, film rental, and orchestra—did not increase proportionately with the number of seats. The most economical size of theater was considered to be dependent upon the location.

A second section of the report by the investigating corporation dealt with the conditions of export trade in motion pictures. America led the world in motion picture trade. The increase in exports since 1913 is shown by the table in Exhibit 4.

EXHIBIT 4

UNITED STATES EXPORTS AND IMPORTS OF EXPOSED FILMS, 1913–1919

Year	Exports	Imports
1913	$2,276,460	$ 872,611
1914	2,282,924	1,009,469
1915	2,498,504	411,999
1916	6,757,658	256,332
1917	6,633,291	227,118
1918	5,132,448	117,148
1919 (to July)	5,963,888	101,171

The table did not indicate all the facts, as some foreign countries charged a considerable duty on exposed film; this led to the export of only the negative. Since 1917 the Daily Consular and Trade Reports of the Bureau of Foreign and Domestic Commerce had contained reports on the success of American-made motion pictures abroad. While there were some criticisms in regard to the character of the stories used as picture subjects, the evidence was conclusive that the American-made picture was exhibited more than any other. The table in Exhibit 5 indicates the development of the export business of the American Pictures Corporation.

EXHIBIT 5

FOREIGN SALES OF AMERICAN PICTURES CORPORATION IN FIRST EIGHT MONTHS OF 1918 AND 1919

Country	1918	1919
England, France, Belgium, and Holland	$ 410,036.86	$1,112,056.32
Scandinavia	283,440.20	311,338.90
Australia	343,653.59	474,544.15
Canada	369,625.80	413,132.95
Brazil	66,308.09	108,523.49
Argentine	75,652.45	88,951.05
Chile, Peru, Bolivia	13,794.63	19,990.82
South America and Central America (special)	....	4,875.78
Mexico	....	16,391.61
Cuba, West Indies, and Central America	54,677.85	43,440.71
China, Manila, Honolulu, and Samoa	39,957.05	53,268.00*
Japan	12,981.42	24,688.55
Spain and Portugal	18,354.10	79,024.04
India, Burma, Dutch East Indies	10,523.77	5,998.12
Italy	....	39,651.58
Africa	14,632.85	17,140.00
	$1,713,638.66	$2,813,016.07

* 6 months only.

A number of new picture-producing corporations recently had been formed in England, France, Germany, and Italy to obtain a share of the export trade, but the United States companies, with 15,000 theaters in which the pictures were first exhibited at a substantial profit, had an advantage difficult to overcome by a foreign country with few picture theaters. The American producer was enabled to undersell any foreigner in the export trade. Recent statistics from Paris indicated that 80% of the films presented there were American-made.

Exhibit 6 presents a table, compiled by the export department of the American Pictures Corporation, showing the number of motion picture theaters in various parts of the world outside the United States.

Exhibit 6

Number of Motion Picture Theaters in Foreign Countries

Country and Colonies	Number of Theaters
France	1,900
Germany, Austria, and Hungary	5,000
Holland	225
Italy	1,000
Japan	600
China	40
Norway	150
Sweden	450
Denmark	225
Russia	90
Spain	800
South Africa	550
India	60
Canada	850
United Kingdom	4,000
All South America	1,300
Total	17,240

A comparison of the number of theaters in any one foreign country in relation to the population of that country with the theaters in the United States, where a theater was claimed for every town of 1,000 inhabitants, indicated that considerable time would be required to develop the motion picture field in foreign countries to the point it had reached in America.

A study of the non-theatrical trade led the corporation to report that it would be necessary for a producer to install a special

producing department to take care of its requirements. It was estimated that 12,000 projection machines were in use in the United States outside the theaters. New York City used 200 projectors in its schools system.

The final section in the investigation dealt with one of the major problems of the industry, the star controversy. The criticism on the part of the public and of some producers regarding the salaries paid stars and directors and the amounts paid for dramatic material was noted. Exhibit 7 presents a diagram, showing the sources of income and expense of the American Pictures Corporation, which was included in the report.

A study of the rate of return on the cost of pictures made with the various stars led to the conclusion "that the 'star system' was sound and would continue to be used by the most successful producers." It was pointed out that the salary question was largely one of supply and demand, and that the plays produced with experienced stars working with a good director cost less than the pictures made with inexperienced and cheaper people. The number of good stars available for screen work showed remarkably few who, even when supplied with a competent director and satisfactory dramatic material, were able to make a good picture. It was estimated that there were about 12 who might be classed as artists, about 20 second-rate stars, and a plentiful number of third-rate actors.

In its investigation of the American Pictures Corporation in particular, the investigating corporation presented data concerning the corporate history, activities, trade standing, quality of production, and management of this company.

The American Pictures Corporation was incorporated under the laws of the state of New York in July, 1916. The capitalization on September 22, 1919, was as follows:

	Authorized	Outstanding
Capital Stock (no par value; stated at $80 per share)	200,000 shares	200,000
6% Debentures dated August 1, 1916, due $135,000 annually on August 1	875,000*	23,000

* 852,000 of these bonds have been paid and cancelled.

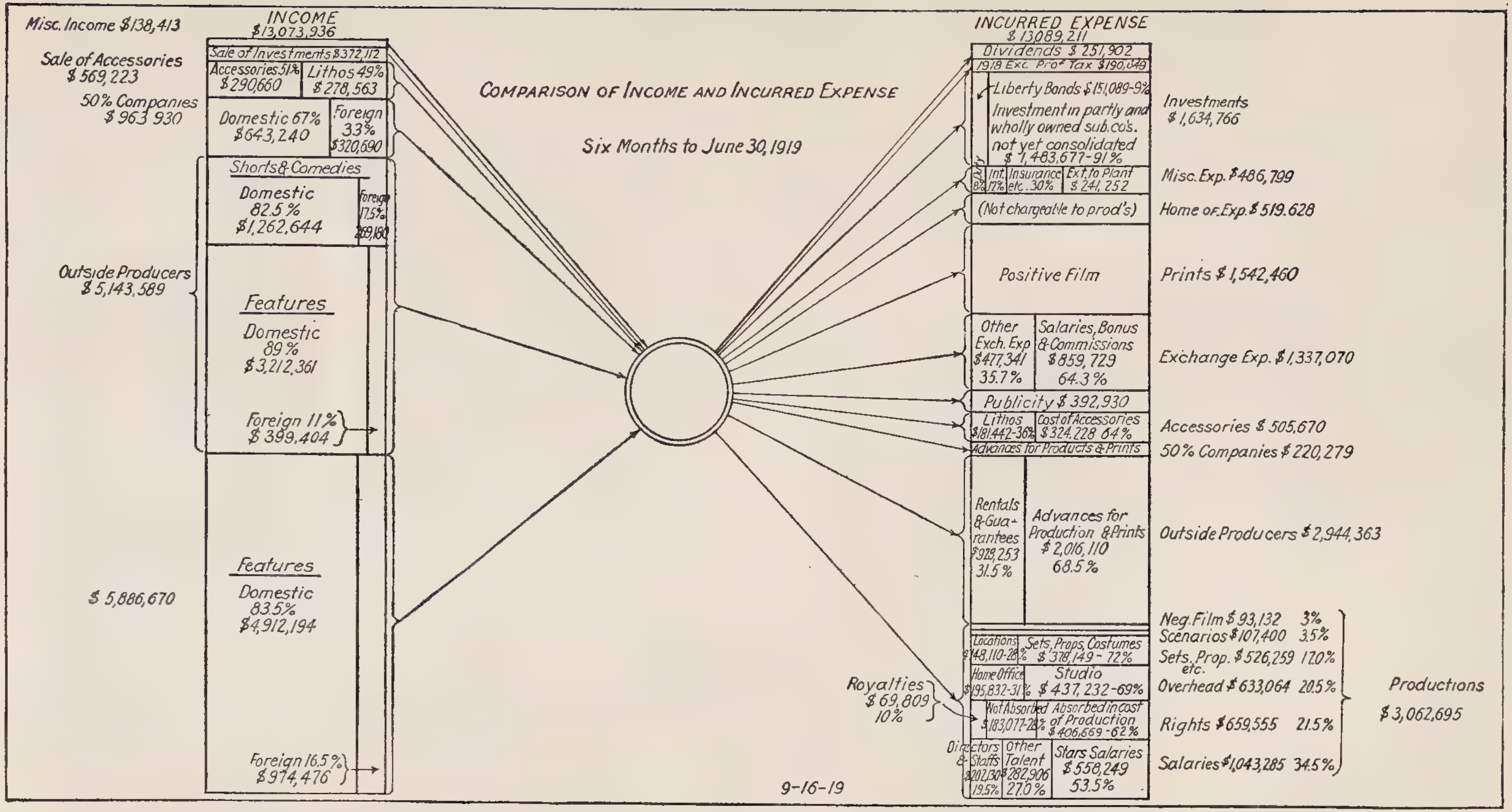

Exhibit 7: Comparison of income and incurred expense of American Pictures Corporation, for six months ending June 30, 1919.

The companies in which the American Pictures Corporation owned a stock interest are shown in Exhibit 8.

EXHIBIT 8

COMPANIES IN WHICH AMERICAN PICTURES CORPORATION OWNED STOCK INTEREST

	Capitalization		Owned by American Pictures Corporation
	Authorized	Issued	
American Pictures Corporation of New Jersey	$ 10,000	$ 1,000	$ 1,000
De Luxe Pictures of South America	$ 4,000	$ 4,000	$ 4,000
Artists Film Company, Ltd., Great Britain	£ 1,000	£ 200	£ 200
American Films Company, Ltd.	£ 10,000	£ 8,052	51 %
American Film Service, Ltd., Great Britain	£ 20,000		51 %
Artists-Scribner Company of New York	$ 100,000	1,000 shs. issued	50 %
Curtis Film Corporation, New York	200 shares	200 shs. issued	50 %
Platt Film Corporation, New York	$ 50,000	500 shs. issued	50 %
Artists-Plant Company, New York	$ 20,000	200 shs. issued	50 %
Southern Pacific Pictures Company, Chile	$ 25,000	All	51 %
The Beaux Arts Corporation	10,000 shares	5,000	100 %
Iowa Theatre Company	$ 400,000	$ 200,000	100 %
Sturgis Company of Delaware		option to	purchase
Southern Theaters, Incorporated	$5,000,000	$1,000,000	$500,000
Canadian Pictures Company	$3,000,000 Pfd.	$1,367,000	$650,000
	$2,000,000 Com.	$1,500,000	$750,000
British Producers, Ltd	£ 200,000 Pfd.	£ 200,000	£ 26,000
	£ 400,000 Com.	£ 400,000	£176,000
Pacific Amusement Company			50 %
Malden Theatrical Syndicate			100 %

The corporation was engaged in all phases of the motion picture business. It produced most of the pictures which it distributed, though it also bought pictures outright from some producers and assisted in the financing and distributing of the output of others. It distributed pictures to the theatrical and non-theatrical trade in both domestic and foreign fields. It had also entered the general theatrical business by the recent acquisition of a company which owned equities in theaters and interests in a booking company and operated dramatic companies to produce plays on the legitimate stage.

The American Pictures Corporation operated two studios in California and three in New York. A studio in London was contemplated. A new fireproof studio was under construction on Long Island to replace the three studios then in operation in New York. It operated film exchanges in 27 cities and maintained an export selling organization.

The investigating corporation found that operators of American theaters credited the company with making more and

better pictures than other producers. A list of the 20 best pictures for the preceding year published by one of the leading photoplay magazines contained 14 pictures made or controlled by the American Pictures Corporation. The National Board of Review estimated that the corporation manufactured about 20% of the total films exhibited in the United States. Over 11,000 of the 15,000 theaters in 1917–1918 were supplied with the company's service, and it was stated that this number would be exceeded when the contracts for the current year were closed.

In judging the quality of the company's product, the investigating corporation mentioned the three main factors, dramatic material, stars, and directors. A large reservoir of dramatic material had been established through arrangements by the corporation with authors and theatrical producers. A comparison of the stars' ages, salaries, and probable future screen life with those of other leading producers showed the corporation to be in the lead. An equally imposing corps of directors was employed.

The management had had considerable experience in producing, distributing, and exhibiting pictures over a period of many years and appeared to be well informed on each phase of the business. The president was in close touch with the international aspects of the industry and was considered to have definite and sound plans for increasing the income of the corporation.

The executive head of production was generally credited with having produced more high-grade feature films than any other person in the industry. Detailed cost records of nearly 100 recent pictures indicated that the company had a far better cost record than most producing companies were able to show, and it was believed that by making a few changes a budget system could be instituted. To quote from the report of the investigating corporation: "This, of course, is the aim of every manufacturer in this country who is operating his manufacturing plant on sound business lines."

The vice president in charge of domestic distribution and the sales department had had a number of years' experience in selling and distributing motion pictures. A sales department covering the entire United States had been developed. It consisted of 9 district managers operating exchanges in 27 cities and a field force of about 1,300 persons. The corporation was recognized by both producers and exhibitors as the most important distrib-

uting medium then in operation. The principal criticism of the department was that it did not push the sale of the company's older pictures in small theaters. It was the opinion of the investigating corporation that an aggressive campaign would result in considerable exhibition of certain pictures which had never appeared in the smaller theaters. The department was able to estimate the yearly return which the company would receive from each of the pictures produced. Percentages of rentals actually earned in the various divisions of the country during the preceding year had been remarkably close to the predetermined standards. An epidemic of influenza and the fact that the producing department had failed to produce the number of pictures on which the estimate was based had resulted in an actual income considerably lower than the department's estimated total income. Exhibit 9 shows an analysis of the growth of the company's film rental returns.

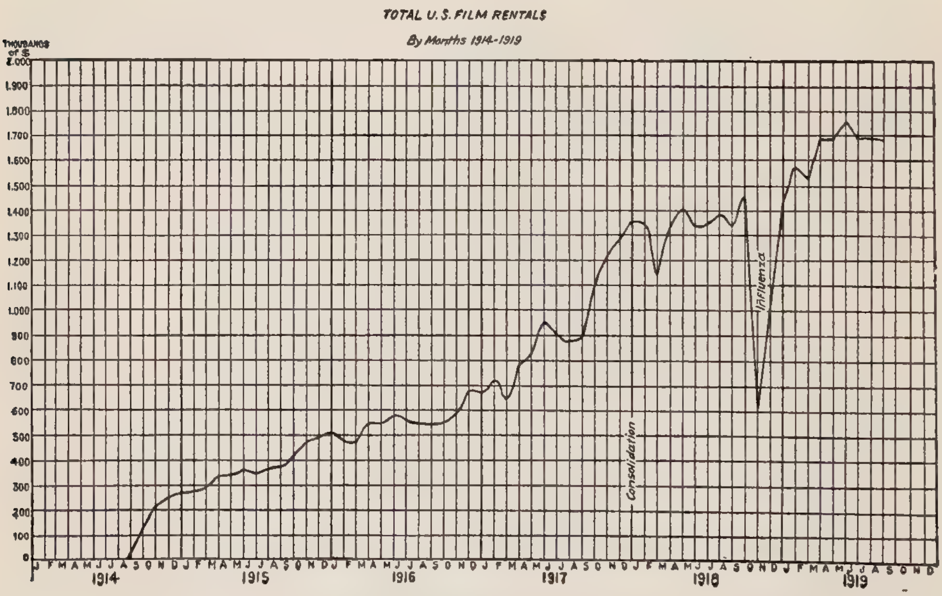

Exhibit 9: Growth of United States film rental returns, American Pictures Corporation, 1914–1919.

A foreign distribution and sales division was under the direction of another executive who had been connected with the industry for eight years. The department maintained six branch distributing offices in Canada as well as offices in London, Sydney,

Wellington, Mexico City, Paris, Copenhagen, Barcelona, Buenos Aires, Rio de Janeiro, Santiago, Tokio, Shanghai, and Manila. In addition there were in effect general contracts with various companies in a number of countries to which the products were distributed. The total return from exports during the first seven months of 1919 had exceeded that of 1918 by $713,425.28. It was pointed out by the investigating corporation that a more aggressive selling campaign would result in a considerable increase in the returns of this department. It was the opinion of this corporation also that economies of considerable importance would result to the American Pictures Corporation if Canadian sales were made by the domestic selling organization, as commonly was done by large manufacturing companies.

In general, it was noted that the management organization was somewhat lacking in general business experience; this fact might prove a severe handicap under strong competition. Salaries were unusually high in relation to those paid elsewhere for similar employment. A list of the more important salaries was submitted. A finance committee was believed advisable to assist the board of directors.

An audit of accounts with supporting schedules was transmitted.

The profit and loss statement for the first six months of the preceding year showed earnings of $2,439,337.11 before taxes, which had been estimated at $1,800,000. An examination of the film rental diagram, the sales department plans, and the increased returns from the exportation of films led to the conclusion that the rate of earnings would continue unless there was an outbreak of influenza or some other unforeseen contingency to affect the theater attendance.

The matter of competition was discussed at some length with the president and other executives of the American Pictures Corporation. It was clear that the corporation, with its dramatic material, stars and directors, system of exchanges, and arrangements with theaters, was in an exceedingly strong position and that any other company would probably require at least a year's time and a considerable amount of capital to develop any strong competition. No attempt was made to prophesy the effect on the industry in general or on the future success of the American Pictures Corporation of such improvements as pictures in color or better mechanical apparatus for taking and projecting pictures.

EXHIBIT 10

COMPARATIVE BALANCE SHEETS OF AMERICAN PICTURES CORPORATION, 1917–1919

	June 28, 1919	Mar. 29, 1919	Dec. 29, 1918	Sept. 30, 1918
Cash	$ 1,082,619	$ 866,063	$ 655,456	$ 851,848
Bills Receivable	31,417	73,335	76,790	110,715
Accounts Receivable	3,395,442	3,563,462	4,317,409	4,419,892
Merchandise	5,510,146	4,732,089	4,672,476	5,399,125
U. S. Government Bonds	196,495	106,895	45,406	16,218
Prepaid Insurance, Rent, etc.	98,878	97,420	13,954	28,702
Total Current Assets	$10,314,997	$ 9,439,264	$ 9,781,491	$10,826,500
Bills Payable	$ 784,405	....	$ 1,361,522	$ 1,588,170
Accounts Payable	522,880	$ 693,098	633,092	822,095
Prepaid Rentals of Films	1,243,725	1,254,350	1,123,138	894,179
Reserves for Federal Taxes	314,194	225,612	172,015	278,540
Total Current Liabilities	$ 2,865,204	$ 2,173,060	$ 3,289,767	$ 3,582,984
Net Current Assets	$ 7,449,793	$ 7,266,204	$ 6,491,724	$ 7,243,516
Land and Buildings, Net of Reserves	$ 473,663	$ 416,118	$ 329,904	$ 287,034
Machinery, Equipment, etc., Net of Reserves	443,988	424,620	427,883	434,646
Securities, as carried on the books	1,628,820	181,418	162,922	178,376
Total Fixed Assets	$ 2,546,471	$ 1,022,156	$ 920,709	$ 900,056
Total Net Current and Fixed Assets	$ 9,996,264	$ 8,288,360	$ 7,412,433	$ 8,143,572
6% Debenture Bonds 1919–1921	$ 349,000	$ 405,000	$ 405,000	$ 409,050
Tangible Net Worth	$ 9,647,264	$ 7,883,360	$ 7,007,433	$ 7,734,522
Salaries paid in advance by issue of Capital Stock	$ 240,360	$ 159,483	$ 178,605	$ 196,996
Goodwill	7,611,445	7,611,445	7,611,445	7,603,945
Total Intangible Assets	$ 7,851,805	$ 7,770,928	$ 7,790,050	$ 7,800,941
Book Net Worth	$17,499,069	$15,654,288	$14,797,483	$15,535,463
Composed of:				
Capital Stock, no par Value, stated at $80 per share	$14,110,880	$13,406,080	$13,406,080	$13,406,080
Capital Surplus (Stock issued at $100). Surplus	3,388,189	2,248,208	1,391,403	2,129,383
Total	$17,499,069	$15,654,288	$14,797,483	$15,535,463
Ratio of Current Assets to Current Liabilities	3.6	4.3	2.9	3.0
Ratio of Total Assets to Total Liabilities	4.0	4.0	2.9	2.9

The president of the American Pictures Corporation planned to expand its activity in the field of exhibition. With the erection and acquisition of theaters and with the forming of business connections with theater circuits, it was planned to build up distributing outlets for the highest type of motion picture exhibition. This plan was expected to result in economies in the form of lower costs of distributing and exhibiting pictures and greater returns from theater operation. To carry out these plans the corporation would require additional financing. The most desirable means of securing additional financing from the standpoint of the corporation was, in the opinion of the president, to

Exhibit 10 (Continued)

	June 30, 1918	Mar. 31, 1918	Dec. 31, 1917
Cash	$ 502,880	$ 592,132	$ 755,138
Bills Receivable	146,897	220,758	172,433
Accounts Receivable	4,288,269	4,298,600	4,149,820
Merchandise	5,041,053	5,131,764	5,166,571
U. S. Government Bonds	16,269	156,504	165,687
Prepaid Insurance, Rent, etc	41,696	41,041	38,531
Total Current Assets	$10,037,064	$ 10,440,799	$10,448,180
Bills Payable	$ 1,831,973	$ 2,278,981	$ 2,528,563
Accounts Payable	658,893	546,387	854,226
Prepaid Rentals of Films	767,640	974,800	979,215
Reserves for Federal Taxes	173,162	722,594	105,127
Total Current Liabilities	$ 3,431,668	$ 4,522,762	$ 4,467,131
Net Current Assets	$ 6,605,396	$ 5,918,037	$ 5,981,049
Land and Buildings, Net of Reserves	$ 264,848	$ 250,396	$ 202,604
Machinery, Equipment, etc., Net of Reserves	424,868	410,181	446,912
Securities, as carried on the books	161,170	223,612	155,051
Total Fixed Assets	$ 850,886	$ 884,189	$ 804,567
Total Net Current and Fixed Assets	$ 7,456,282	$ 6,802,226	$ 6,785,616
6% Debenture Bonds 1919–1921	$ 553,500	$ 545,400	$ 541,000
Tangible Net Worth	$ 6,902,782	$ 6,256,826	$ 6,244,616
Salaries paid in advance by issue of Capital Stock	$ 216,118	$ 248,412	$ 294,767
Goodwill	7,603,945	7,604,945	7,604,945
Total Intangible Assets	$ 7,820,063	$ 7,853,357	$ 7,899,712
Book Net Worth	$14,722,845	$14,110,183	$14,144,328
Composed of:			
Capital Stock, no par Value, stated at $80 per share.	$13,406,080	$13,430,080	$13,438,080
Capital Surplus (Stock issued at $100)			
Surplus	1,316,765	680,103	706,248
Total	$ 14,722,845	$14,110,183	$14,144,328
Ratio of Current Assets to Current Liabilities	2.9	2.3	2.3
Ratio of Total Assets to Total Liabilities	2.7	2.2	2.2

increase the capitalization by the issuance of additional shares of no par value common stock. The amount of financing required would depend upon the rapidity with which the proposed plan was put into effect.

The corporation had credit lines of approximately $3,000,000. The balance sheet as of June 30, 1919, was inspected, and it indicated that the assets had not been overvalued. Exhibit 10 shows the company's comparative balance sheets for the years 1917–1919. If all finished pictures for export could be sold at the rate commanded by those most recently sold, the income would go a long way toward offsetting the goodwill item. The films recently produced were considered to have a large potential earning power. Exhibit 11 shows the company's comparative income and profit and loss statements for the years 1917–1919.

EXHIBIT 11

COMPARATIVE INCOME AND PROFIT AND LOSS STATEMENTS OF AMERICAN PICTURES CORPORATION 1917–1919

	26 Weeks Ended June 28, 1919	Year Ended December 29, 1918	Year Ended December 31, 1917
Gross Rentals and Sales	$11,994,189.47	$17,259,904.92	$10,294,023.67*
Sales of Lithographs	278,563.36	683,099.60	157,027.26†
Sales of Accessories	290,659.86		
Gross Sales	$12,563,412.69	$17,943,004.52	$10,451,050.93
Accruing to Outside Manufacturers	$ 3,913,488.87	$ 6,421,812.06	
Net Sales	$ 8,649,923.82	$11,521,192.46	$10,451,050.93
Cost of Lithographs Sold	$ 181,441.81	$963,897.20	
Cost of Accessories Sold	290,659.86		
Cost of Positive Prints	688,327.33	201,287.58	$ 314,682.54
Royalties	69,809.61	133,171.82	34,510.27
Duties	39,198.02	37,016.45	(Included below)
Exhaustion of film rented	3,042,917.42	4,890,135.14	5,373,956.93
Total Cost of Sales	$ 4,312,354.05	$ 6,225,508.19	$ 5,723,149.74
Gross Profit	$ 4,337,569.77	$ 5,295,684.27	$ 4,727,901.19
Cost of Selling and Distributing, including Sundries	$ 2,360,806.76	$ 4,021,003.65	$ 2,395,210.60‡
Net Profit	$ 1,976,763.01	$ 1,274,680.62	$ 2,332,690.59
Other Income	$ 510,525.00	$ 147,495.73	$ 54,394.70
Income Available for Interest	$ 2,487,288.01	$ 1,422,176.35	$ 2,387,085.29
Interest Charges	$ 47,950.90	$ 141,001.84	$ 140,818.80
Net Income	$ 2,439,337.11	$ 1,281,174.51	$ 2,246,266.49
Dividends Paid	$ 251,902.50		$ 1,540,018.34
Balance	$ 2,187,434.61	$ 1,281,174.51	$ 706,248.15

* Net; gross rentals, less accruing to outside manufacturers.
† Profits on advertising and manufacturing prints.
‡ Including Duties and all other expenses not classified under other headings.
Note: Income and Excess Profits Taxes not taken into consideration in preparing the above statement.

Gilmore, Field and Company was impressed by the development of the motion picture industry and the large earnings of the American Pictures Corporation as reported by the investigating corporation. It believed that the industry as a whole had reached a point in its development at which stabilized earnings were to be expected in the future. The position of the American Pictures Corporation as leader in the industry gave promise of a profitable connection with the industry. The firm did not wish, however, to originate motion picture securities because of the effect upon its other financial activities. Neither did the firm wish to appear second to other investment banking firms in participation. It was decided, therefore, that the interests of Gilmore, Field and Company in any syndicate formed to underwrite motion picture securities should not be publicly

EXHIBIT 11 (Continued)

	Quarterly Periods Ending		
	June 28, 1919	Mar. 29, 1919	Dec. 29, 1918
Gross Rentals and Sales	$ 6,417,370.50	$ 5,576,818.97	$ 3,212,237.64
Sales of Lithographs	143,687.21	134,876.15	99,986.42
Sales of Accessories	152,921.55	137,738.31	
Gross Sales	$ 6,713,979.26	$ 5,849,433.43	$ 3,312,224.06
Accruing to Outside Manufacturers	$ 2,107,705.70	$ 1,805,783.17	$ 908,187.24
Net Sales	$ 4,606,273.56	$ 4,043,650.26	$ 2,404,036.82
Cost of Lithographs Sold	$ 88,114.08	$ 93,327.73	$ 99,986.42
Cost of Accessories Sold	152,921.55	137,738.31	
Cost of Positive Prints Sold	450,482.34	237,844.99	171,213.99
Royalties	53,429.35	16,380.26	47,863.08
Duties	32,085.12	7,112.90	9,113.41
Exhaustion of Film Rented	1,504,489.77	1,538,427.65	1,674,021.26
Total Cost of Sales	$ 2,281,522.21	$ 2,030,831.84	$ 2,002,198.16
Gross Profit	$ 2,324,751.35	$ 2,012,818.42	$ 401,838.66
Cost of Selling and Distributing, including Sundries	$ 1,276,379.16	$ 1,084,427.60	$ 1,161,308.33
Net Profit	$ 1,048,372.19	$ 928,390.82	$ 759,469.67*
Other Income	$ 459,285.44	$ 51,239.56	$ 65,408.58
Income Available for Interest	$ 1,507,657.63	$ 979,630.38	$ 694,061.09*
Interest Charges	$ 25,125.59	$ 22,825.31	$ 43,919.15
Net Income	$ 1,482,532.04	$ 956,805.07	$ 737,980.24*
Dividends Paid	$ 252,901.50		
Balance	$ 1,229,630.54	$ 956,805.07	$ 737,980.24*

* Loss.

recognized. Under this condition, the firm was willing to engage in the financing.

The interest of two security distributing firms was secured and a syndicate formed in which the name of Gilmore, Field and Company did not appear. In accordance with the recommendation by the investigating corporation that a finance committee be formed to assist the board of directors of the American Pictures Corporation, a committee of five was created with the vice president of the investigating corporation as chairman and representative of Gilmore, Field and Company. The president of the American Pictures Corporation, a representative from each of the security distributing firms in the syndicate, and the president of a commercial bank were the other members of this committee.

The new finance committee did not favor the plan to issue additional shares of no par value common stock proposed by the president of the American Pictures Corporation. Common stock in a motion picture company was considered too speculative from the standpoint of security distribution and therefore an uneco-

EXHIBIT 11 (Continued)

	Quarterly Periods Ending		
	Sept. 30, 1918	June 30, 1918	Mar. 31, 1918
Gross Rentals and Sales	$5,001,063.69	$4,637,008.88	$4,409,594.71
Sales of Lithographs Sales of Accessories	209,044.50	190,020.43	184,048.25
Gross Sales	$5,210,108.19	$4,827,029.31	$4,593,642.96
Accruing to Outside Manufacturers	$1,994,383.71	$1,875,432.50	$1,643,808.61
Net Sales	$3,215,724.48	$2,951,596.81	$2,949,834.35
Cost of Lithographs Sold Cost of Accessories Sold	$ 209,044.50	$ 190,020.43	$ 184,048.25
Cost of Positive Prints Sold	170,422.89	1,278.26	139,170.94
Royalties	14,746.35	70,562.39	(Included below)
Duties	7,438.53	20,464.51	
Exhaustion of Film Rented	994,771.26	1,139,137.47	1,082,205.15
Total Cost of Sales	$1,396,423.53	$1,421,463.06	$1,405,423.44
Gross Profit	$1,819,300.95	$1,530,133.75	$1,544,410.91
Cost of Selling and Distributing, including Sundries	$1,042,134.54	$ 872,348.87	$ 945,211.91*
Net Profit	$ 777,166.41	$ 657,784.88	$ 599,199.00
Other Income	$ 51,037.17	$ 17,882.67	$ 13,167.31
Income Available for Interest	$ 828,203.58	$ 675,667.55	$ 612,366.31
Interest Charges	$ 15,584.69	$ 39,200.06	$ 42,297.94
Net Income	$ 812,618.89	$ 636,467.49	$ 570,068.37
Dividends Paid			
Balance	$ 812,618.89	$ 636,467.49	$ 570,068.37

* Includes Royalties and Duties.
Note: Income and Excess Profits Taxes have not been taken into consideration in preparing the above statement.

nomical means of financing. A bond issue would not command a reasonable price because of the lack of stabilized earnings in the past. Preferred stock, in the opinion of the committee, was the most satisfactory financing in view of the attendant circumstances. Accordingly, an issue of $10,000,000 8% cumulative convertible preferred stock was proposed by the syndicate. The financing was satisfactory to the stockholders of the American Pictures Corporation. It was voted to authorize $20,000,000 and issue $10,000,000.

Stockholders were given the right for 15 days to subscribe at par ($100) to one share of the new preferred stock for each two shares of common stock held. Stock remaining unsubscribed by the stockholders was offered to the public at par.

The new stock was convertible at par into common stock at $110 per share at any time during the first year, at $115 per share during the second year, and at $120 thereafter. The stockholders voted also to increase the common stock from 200,000

shares, no par value, to 450,000 shares, no par value. Of the 250,000 shares of additional common stock, approximately 182,000 shares were to be set aside to provide for the conversion not only of the $10,000,000 issued but also of the $10,000,000 authorized but unissued.

COMMENTARY: The chief significance of this case is to be found in the picture that it gives of the condition of the motion picture industry in 1919.

Gilmore, Field and Company had never up to that time been engaged in motion picture financing. Like other banking firms, however, it was attracted by the possibilities which this rapidly expanding industry seemed to possess. Before engaging in such financing, it was distinctly worth while for the firm to make such a survey as was conducted. If it be said that the information was incomplete, the reply may be made that it is probable that many of the additional facts theoretically desirable were not available at all, while others were obtainable only at excessive cost.

The reasoning on the part of the bank by which it came to the conclusion that cumulative convertible preferred stock should be issued was undoubtedly correct from the standpoint of the bank. It is interesting to note that, although Gilmore, Field and Company was quite willing to loan funds to the American Pictures Corporation, it still had the feeling that the industry was not entirely respectable, as is evidenced by the fact that it was unwilling to have its own name appear in the transaction. This attitude toward the motion picture business was quite characteristic of banking institutions at the time the issue in this case arose. Needless to say, such a feeling no longer exists.

November, 1929 H. T. L.

Ellison Pictures Corporation[1]

PRODUCER AND DISTRIBUTOR—MOTION PICTURES

Accounting—*Losses from Roadshow Charged to Profit and Loss.* A corporation producing and distributing motion pictures, before presenting its quarterly financial statement to the New York Stock Exchange, on which its securities were listed, was faced with the question of how to distribute the losses of exhibiting one of its pictures by a special form of exploitation known as roadshowing. Although roadshowing was utilized as a form of advertising not only for the particular picture but for the producing company in general, in this case it had been largely a failure. The company decided to charge this item to profit and loss for the quarter.

(1928)

In the preparation of a statement of earnings for the first quarter of the fiscal year 1928, the comptroller of the Ellison Pictures Corporation considered the disposition to be made of losses incurred in roadshowing a feature motion picture production The quarterly statement was the last one to be issued prior to a change in the management of the company.

"Roadshowing" was the term designating the pre-release exhibition of a motion picture in the larger cities of the United States. Only feature pictures of special merit were so exhibited. Such pictures, preceded by an advance agent and accompanied by a company manager and a special orchestra, were sent from city to city to be exhibited. These exhibitions usually took place in legitimate theaters leased for that purpose. A top admission price of $2 was commonly charged for roadshows.

The Ellison Pictures Corporation, with studios in Hollywood and distributing offices in New York, was one of the largest motion picture producer-distributor companies. It sold pictures through its distributing organization, which included exchanges in 31 key cities of the United States. It distributed on a percentage basis pictures made by other producing companies.

Ellison pictures in the 1927–1928 season had not been so well received as the executives of the company had expected. In the

[1] Fictitious name.

opinion of the executives, this was because the product received from the other producing companies was of poorer quality than it had been heretofore. As a result of the low quality product, considerable sales resistance had been met and the total product distributed by the Ellison Pictures Corporation had not been shown in so many theaters as had been expected.

In order that the new selling season, starting late in May, 1928, might open as auspiciously as possible, the company had decided to select one of its forthcoming releases to be roadshown for the purpose of rehabilitating an interest in the company and in its product. It was hoped that the success of a particular picture would constitute a strong selling point in obtaining exhibition contracts for new pictures. The company had recently produced for release early in February, 1928, a picture entitled "Indiana."[2] The picture was of a type not ordinarily roadshown but was of sufficient merit, in the opinion of a sales executive, to warrant extra exploitation.

Expenses and receipts for the roadshowing of the picture were assembled in an account termed "Roadshow-Indiana." Expenses incurred were debits to the account and receipts were credits. The debit balances, or losses, were as follows:

ROADSHOW—INDIANA

	Debit Balance
Dec. 31, 1927	$29,766.04
Jan. 28, 1928	47,849.18
Feb. 25, 1928	60,798.62
March 24, 1928	67,905.27

A question arose concerning the disposition of this loss in the preparation of the quarterly statement of earnings for the New York Stock Exchange, upon which the securities of the company were listed.

Advertising, publicity, and exploitation expenses were commonly charged directly to a particular picture as far as possible, and the balance was arbitrarily allocated to pictures. The cost of producing the negative, together with the above expenses, and print costs were amortized during the life of the picture. An amortization schedule had been prepared upon the basis of past experience as to incoming revenue from pictures; weekly percentages from the table indicated the amount of picture value

[2] Fictitious title.

to be amortized during each period of four weeks. Total cost was ordinarily amortized during the first 72 weeks of the life of the picture. In determining the profit realized from pictures distributed, the amount of gross income received was credited, and picture amortization and current distribution expense were debited to Profit and Loss.

From the results of the roadshowing as compared with similar results from other roadshown pictures, the comptroller was convinced that the picture "Indiana" would never receive sufficient income to offset its production cost. The allocation of the additional expense incurred through roadshowing the picture would only increase its deficit. At the same time he realized that by roadshowing the picture the company would receive more income than it otherwise would have, since roadshowing served to exploit a picture and to render it more valuable as a drawing attraction in exhibition. Some part of the roadshow expenditure might logically be allocated to general advertising, inasmuch as the roadshowing of the picture was for the purpose of building up the company's name. It was logical, furthermore, to presume that additional sales on other products during the last two months of the 1927–1928 season had been made as a result of the roadshowing of the picture "Indiana."

On the other hand, the income tax division had frowned upon capitalization of advertising expense as an asset and would be inclined to question the accounting. Again, the roadshowing had been largely fruitless in accomplishing the purpose desired; the picture's pre-release exhibition did not provide a strong selling point. If, however, the amount of the loss incurred in roadshowing were charged as a loss during the quarter in which the expenditure was incurred, the quarterly statements became of little value for comparative purposes.

Commentary: The value of roadshowing a picture prior to general release is not an issue in this case. It should be noted, however, that if a company decides to roadshow a picture, the picture should be of such a quality as to warrant this unusual procedure. In this particular problem the picture "Indiana" should never have been roadshown. The picture did not in itself yield sufficient income to offset its production cost; still less did it earn a profit. Its pre-release exhibition did not provide any strong selling arguments which might be used later by salesmen. The usual purposes to be attained by roadshowing, therefore, were not attained in this instance.

The mistake having been made, however, the immediate issue became one of what should be done with the losses which were incurred. It would seem that a sound decision would have been to withdraw the picture as a roadshow and sell it as a feature picture if possible. In this manner some additional revenue would have been received, and, since it would have been sold together with other pictures, no additional cost would have been incurred by so selling it. The picture should have been charged with the additional expense incurred as the result of roadshowing, even though this would have increased its deficit. The total losses on the picture should have been charged off in precisely the same manner as the losses on any other picture. It would have been quite illogical to charge any of the roadshowing expenditure to general advertising, since evidence in the case indicates that the roadshowing of the picture neither tended to build up the company's name, nor assisted in the sale of other pictures. The conclusion suggested, therefore, is sound, quite aside from the attitude of the income tax division.

There would have been a stronger argument for charging the losses to advertising had those losses been incurred as a result of an attempt to exploit the picture on Broadway only, instead of roadshowing it. Broadway exploitation, while it is expected to yield revenue, is designed chiefly to aid in the selling of the picture to exhibitors. Since the purpose is primarily advertising, there may be some justification for so exploiting a picture, even though the additional costs are not fully met by the box office receipts at the exploitation theater.[3] Such a loss would not ordinarily be justified were the picture roadshown for the sake of the profits to be directly obtained from such exhibition.

In the case under consideration, the company did not actually follow the procedure recommended above but charged the entire amount of the loss incurred in roadshowing during the quarter to the profit and loss account. This decision may have been the result of the fact that the quarterly statement to which reference is made was the last one to be issued prior to a change in the management of the company, rather than of a failure to weigh properly every element in the case.

November, 1929 H. T. L.

[3] See Goldstein, Incorporated, page 417.

RKO Productions, Incorporated

PRODUCER—MOTION PICTURES

ACCOUNTING—*Amortization of Motion Picture Values.* A company producing motion pictures and distributing them through subsidiaries had no systematic method of depreciation for its films after release. The company had applied for permission to list its common stock on the New York Stock Exchange, and, if this permission were granted, it would be obliged to submit quarterly reports to the exchange. The company's auditors wished, therefore, to have the company adopt an accounting policy for depreciation similar to that of other motion picture companies reporting to the exchange. Under the plan proposed, the individual incomes from all pictures released during the previous 36 months were analyzed on a monthly basis, and from this analysis an amortization schedule that would depreciate each picture in proportion to its decrease in earning power was prepared.

(1929)

In January, 1929, the treasurer of RKO Productions, Incorporated, was requested by Holloway and Rhodes,[1] the firm's auditors, to consider a change in the existing policy of depreciating the value of motion pictures carried on its books.

RKO Productions, Incorporated, was formed in 1928 as a subsidiary of the Radio Corporation of America to take over FBO Productions, Incorporated, one of the 10 largest producing companies in the industry, and its three subsidiaries, FBO Pictures Corporation, FBO Corporation of Canada, Limited, and FBO Export Corporation. FBO Productions, Incorporated, produced pictures in its studios in Hollywood and New York City, and assumed the risk of profit and loss on its product. The subsidiaries distributed FBO pictures and other pictures on a percentage share of the revenue derived from such distribution. With the transfer of ownership the same corporate organization was maintained, with the names of the subsidiaries changed to RKO Distributing Corporation, RKO Corporation of Canada, Limited, and RKO Export Corporation.

In the transfer of corporate ownership, the firm of Holloway and Rhodes was asked to appraise the balance sheet values. A differ-

[1] Fictitious name.

ence in the proportionate value of released motion pictures was found to have resulted from a difference in the method of writing off such values from time to time. Inasmuch as the new corporation had applied to the New York Stock Exchange for permission to list its common stock and as quarterly reports to the exchange would be required if this permission were granted, the auditors believed that the adoption of an accounting policy for depreciation similar to that of other motion picture companies reporting to the exchange was advisable.

Holloway and Rhodes, a firm of accountants with offices in the leading cities of the world, had become the foremost authority on accounting practice in the motion picture industry through long experience in consulting and certification work for firms in the industry. It is said that prior to 1921, several motion picture companies were unable to close their books and that Holloway and Rhodes and other public accountants were periodically called in to determine the position of these companies. To remedy this condition, Holloway and Rhodes had prepared for its clients a depreciation table based on figures furnished by four large companies. It was found later, however, that the several companies had such different experiences in revenue accruals that individual schedules were necessary in determining the residual values of their pictures. The method of depreciation recommended by the firm in 1929, to be described later, was used by many leading motion picture companies and had become well recognized by the authorities at the stock exchanges and by income tax officials.

Prior to 1924, FBO Productions, Incorporated, at that time Film Booking Offices, Incorporated, was engaged solely in the distribution of motion pictures. In the company's accounting, the negative costs of a picture had been set up as the value of the picture at the time of its release for exhibition. The cost of producing a picture, commonly referred to as "negative cost," included the following expenses: scenario, direction, star, acting, wardrobe, stage props, sets, lighting, effects, location, film, titles, miscellaneous, staff overhead, and studio overhead. The distributor commonly advanced to the producer an amount equal to the cost of the negative. The revenue from a picture was drawn from two markets: the domestic and the foreign. An exhaustion table had been prepared by the treasurer of the com-

pany for determining the monthly amortization of the domestic revenue and the consequent depreciation in the value of the picture. The exhaustion table was based on the experience of the treasurer relative to the rate of income on similar pictures. In the table the life of each picture was fixed at two years; 90% of the domestic revenue was expected to accrue in the first year, and 10% in the second year. Monthly charges were determined by the table; monthly credits were made in accordance with the revenues received. It was the practice of some distributing companies to plot a curve of the drawing power of each picture and so estimate its probable life and earning power. From this curve a company was prepared to reckon the lessening values of negatives.

The 20% constituting the company's expectations of foreign revenue had been allocated to foreign territories as a quota on the basis of past experience. The percentage allocated to a territory was charged off at the time a picture was released for distribution in that territory. For example, 7½% of the total revenue on a picture was normally received from distribution in Great Britain; upon the release of a picture in Great Britain 7½% of its negative value was charged off.

The method of depreciating the value of pictures in effect in 1928, when the auditors were called in to assist in the evaluation of the assets of FBO Productions, Incorporated, was initiated in 1924, at which time, FBO Productions, Incorporated, and its subsidiaries were formed. This method operated as follows. The negative cost of a picture was its value at the time of release, and was an asset to FBO Productions, Incorporated, the parent company. Revenue received by the distributing subsidiary from the sale of licenses to exhibit a picture in the United States was shared on a percentage basis: 60% was paid to FBO Productions, Incorporated, as the producing company, and 40% remained as income for FBO Pictures, Incorporated, as the distributor. The procedure was similar with the other distributing subsidiaries except that the percentage share of revenue varied with each subsidiary. The producer's share of revenue was credited monthly to the picture account, thereby setting up a residual value of original cost less credits for income received. Four or five months after a picture was released, a time sufficient for forming a judgment as to its success, the value of the picture was adjusted by executive

decision; if the revenue already received and the employed contracts indicated that the picture would not return its cost, the loss was anticipated and was charged off to expense. No profit was taken, however, until sufficient revenue had accrued to show a profit. After sufficient revenue had been received to offset the original cost, the incoming revenue was credited to profit and loss each month. At the end of two years, the picture account was stated on the books at a value of $1.

Holloway and Rhodes did not favor this method of depreciating motion picture values. It was the contention of the auditors that the values did not represent the actual status of the depreciating assets. The practice of appraising a picture during the course of its run was, in their opinion, too much a question of judgment on the part of executives. Such judgment might well be biased by a desire on the part of the executives to present a favorable statement of earnings.

Holloway and Rhodes, therefore, proposed the adoption of a system embracing an amortization schedule. The firm preferred the term "amortization" to "depreciation" because of the similarity of a motion picture film to a leasehold and its dissimilarity to merchandise subject to depreciation through wear and tear. A motion picture negative was still in good physical condition when a picture had completely lost its value; any obsolescence was in the inability to bring in income. In the preparation of an amortization schedule, each picture released during the previous 36 months was analyzed to determine the percentage of its income received each month since its release. The individual incomes from all pictures during the first month after release were then averaged to determine the amortization rate for the first month in the life of a picture. The second, third, fourth, etc., months were analyzed in the same manner. From this analysis of motion picture revenue in FBO Productions, Incorporated, it was found that over 99% of the revenue[2] from the pictures released had accumulated in 18 months after release and that

[2] Motion pictures are especially valuable while they are new. The element of novelty is one of the most important factors in attracting the public to view them. It is therefore important to the producer and distributor that every feature picture have an early presentation and a wide distribution to the motion picture theaters of the country. Licenses to exhibit each picture as it is produced usually are sold throughout the entire country either simultaneously with the release of the picture or in advance of its release.

pictures on the average accumulated revenue in accordance with the schedule shown in Exhibit 1.[3]

EXHIBIT 1

SCHEDULE OF AMORTIZATION OF NEGATIVE PRINTS OF FBO PRODUCTIONS, INCORPORATED

Month	Percentage	Accumulative Percentage
1	12½	
2	14	26½
3	12	38½
4	9½	48
5	8	56
6	6	62
7	7	69
8	6	75
9	5	80
10	4	84
11	3½	87½
12	2½	90
13	2½	92½
14	2½	95
15	1½	96½
16	1½	98
17	1	99
18	1	100

Positive print costs were set up in a separate schedule because of the fact that positives were subject to physical wear and tear; the company's experience indicated that the life of a positive print did not exceed one year. The monthly percentages for amortization of positive print costs were derived by arbitrarily increasing the percentages in the negative table to provide percentages that would amortize the positive costs within 12 months. The schedule of these percentages is shown in Exhibit 2.

According to the auditors' plan, the value of released pictures would be depreciated at the rates shown in the schedules of amortization. Unreleased pictures were carried on the books at cost of production. Income received in excess of the monthly amortization percentage would become a profit for that month,

[3] Adolph Zukor, president of the Paramount Famous Lasky Corporation, in the *Magazine of Business*, April, 1928, in describing the accounting policy of his company said: "A production freshly completed is inventoried at production cost, and remains there until it is released to the public. In the first four weeks after a production is released to the market, we depreciate it 30%. We keep depreciating it according to a definite table week by week, and month by month, so that 60% of its inventory value is written off in three months. At the end of the first year, 90% has gone. The remaining 10%, at nearly 1% a month, is written off in the second year. Inventory value thus disappears entirely in two years' time."

EXHIBIT 2

SCHEDULE OF AMORTIZATION OF POSITIVE PRINTS OF FBO PRODUCTIONS, INCORPORATED

Month	Percentage	Accumulative Percentage
1	14	
2	14½	28½
3	14	42½
4	13	55½
5	10	65½
6	8½	74
7	7	81
8	6	87
9	4	91
10	3½	94½
11	3	97½
12	2½	100

and similarly the failure of income to reach the amortized figure would indicate a loss for that period. In some companies the period for amortization purposes was a week, and picture values were depreciated weekly from a schedule of weekly amortization.

The adoption of such a schedule was subject to several limitations, in the opinion of the treasurer of RKO Productions, Incorporated. In the first place, it was adaptable to the amortization only of those pictures which were similar to the pictures included in the analysis. A change in the type of pictures produced would necessitate adjustments in the rates of amortization. The company planned to produce for the 1929–1930 season a higher grade of pictures than had formerly been released, which would be sold to larger theaters and would receive a greater proportion of their income during the first month after release. FBO Productions, Incorporated, had specialized largely in action, particularly "western," pictures. The program planned included a much larger proportion of feature and special pictures. The company planned also to produce a series of special talking pictures, costing in the vicinity of $1,000,000 each. Such pictures would be eligible for "roadshowing,"[4] which would again affect the rate at which income would be received. There was considerable doubt, therefore, in the mind of the treasurer as to the practicability of utilizing the amortization schedule for the 1929–1930 product of the company.

[4] See Ellison Pictures Corporation, page 80.

A change in the method of depreciating the values of pictures produced prior to 1929–1930, furthermore, would destroy the value of previous earning statements for comparative purposes. The treasurer believed that it would be better accounting policy to retain the former system of depreciation on these pictures until their total values had been entirely written off. He also considered the effect of such a change upon income tax reports for the current year. The income tax division had accepted the former method of depreciating motion picture values. A change in method might involve considerable explanation of readjusted values. In this connection, the method of writing off motion picture values employed by the Universal Pictures Corporation for a number of years was such that the entire cost of production was written off at the time the picture was released. This practice was upheld by the income tax officials because it had been followed for a number of years and was, therefore, consistent.

While he was convinced of the sound philosophy in the depreciation of picture values in accordance with the Holloway and Rhodes method, the treasurer considered the schedule to be at variance with newly developed conditions in the industry. The development of large theater chains by producing and distributing companies made it possible to secure many bookings at one time soon after the release of a picture. This practice tended to bring in a larger proportion of the revenue at an earlier stage in the life of the picture than had been secured before.

RKO Productions, Incorporated, decided, however, to adopt the method of depreciation proposed by Holloway and Rhodes. The decision was largely based upon the desire to secure a more systematic and scientific appraisal of motion picture values free from the element of executive judgment. It was realized that the basic data upon which the schedule was prepared were not entirely in accord with conditions existing in the company and the industry. For that reason, numerous adjustments might be necessary.

The new method was placed in operation as of January 1, 1929, and monthly charges were made in accordance with the schedule. At the end of March, 1929, the quarterly statement of earnings was prepared on the new basis. Also, at that time, 35 pictures were analyzed with respect to income received and amortization credited; on these 35 pictures, the income during the period

analyzed amounted to $1,070,000 against which $905,000 amortization had accrued.

A further analysis of each picture showed a difference in some instances between income and amortization not explainable by the popularity of the picture. The difference was found to have resulted from an amortization charge for the first month greatly in excess of the revenue received from a small number of bookings during the first month after release. In order that the figures should more nearly reflect the actual status of the picture, it was necessary to consider the release dates to be of the month in which actual distribution was first secured.

The question of taking profits on a large super-special picture as determined by the amortization table was raised. The revenue from the picture greatly exceeded the amortization credits. It was difficult to determine whether the excess revenue was reflecting profits on the picture or an erroneous conception of the rate at which its income would accumulate. The president believed that the amortization schedule did not reflect the actual condition of the picture, and suggested, therefore, a further consideration of the depreciation policy of the company.

Commentary: The desire of RKO Productions, Incorporated, for a systematic amortization schedule was a laudable one. It augurs well for a greater stabilization in the motion picture industry that companies are trying more and more to follow stabilized practices in their industry and are looking for the more progressive methods in their own and other fields. In this, RKO Productions, Incorporated, is but one illustration of many which might be cited.

The treasurer was entirely justified in calling attention to the fact that competitive conditions were changing very substantially, and to the equally important fact that RKO Productions, Incorporated, was decreasing the number of feature releases at the same time that it was raising the quality of its productions. The case indicates that Holloway and Rhodes used the past experience of this particular company as a basis for determining an amortization schedule. How far the accountants modified any conclusions they may have drawn from the data according to the facts noted by the treasurer, or according to their experience with other motion picture producers, is not made clear. In any event, the specific schedule set up by the accountants and effective on January 1, 1929, could not, in the light of subsequent experience with it, be expected to be followed without modification. It appears that some amendments were made three months after its adoption. Still further changes in all likelihood would have to be made later.

To use even the tentative schedule as a guide, however, was undoubtedly better than to use none at all, provided nothing better was available or could have been devised in the time available for such work. On the other hand, frequent changes in the bases for amortizing would be unwise. In this particular case, the decision to adopt the schedule was perhaps influenced by the desire on the part of the company to have its stock listed on the New York Stock Exchange. It might have been contended, therefore, that the purpose of this particular schedule was merely to make a showing for the Listing Committee of the Exchange and not with the thought of its actual use. It does not appear from the case, however, that this thought was the determining factor.

In practice, the schedule for amortization varies widely with different companies. Regardless of the general amortization schedule adopted by the company for its ordinary pictures, it would have been wise to set up a separate amortization schedule for its special productions.

It may be noted as a matter of general interest that the rapidity with which these values were amortized is far greater than that which is customary for many other types of products. The continuous demand for new releases, the constant changes in the type of pictures demanded by the public, the necessity of capitalizing promptly on the advertising value of Broadway exploitation, are among the factors which contribute to the rapid depreciation of motion picture values.

November, 1929 H. T. L.

Electro Film Corporation[1]

PRODUCER AND DISTRIBUTOR—MOTION PICTURES

PRICING—*Cash Discounts as Aid to Collections on Exhibition Contracts.* A company producing and distributing motion pictures was faced with cancellations of exhibitor contracts for silent pictures, the showing of which had been postponed because of the introduction of the more popular sound pictures. The company decided to grant liberal cash discounts to exhibitors on outstanding contracts; these discounts were to be determined for individual exhibitors by the company's salesmen, after they had made a thorough analysis of each exhibitor's financial standing. The results proved satisfactory not only in the percentage of accounts collected but also in the stimulus to the sales organization because of the goodwill that was created and the new accounts that were acquired.

SALESFORCE COMPENSATION—*Bonus to Stimulate Collections on Contract Sales.* A company producing and distributing motion pictures decided to grant cash discounts on outstanding contracts to exhibitors, in order to prevent cancellations of exhibitor contracts for silent pictures in favor of the new sound pictures. The company's salesmen were to determine each exhibitor's discount, on the basis of a thorough analysis of his financial standing. In order to stimulate salesmen's efforts in carrying out this plan, the company decided to set up bonus quotas for each exchange, to be divided by the exchange managers among the individual salesmen.

(1929)

In April, 1929, the Electro Film Corporation found that the introduction of sound pictures had caused exhibitors to postpone their bookings of the silent pictures for which they had contracted at the beginning of the 1928–1929 selling season. Sales of motion pictures were in reality leases of pictures for exhibition. Generally the dates for exhibition of the various pictures under contract were not specified in the contract but were arranged at a later date by negotiation between the exhibitor and a representative of the distributor. Payment for the use of a picture always was made in advance of exhibition or obtained by the distributor by C.O.D. shipment of the film. The recognized box office value of the newly developed synchronized pictures had encouraged exhibitors to shelve silent productions. As a result there were

[1] Fictitious name.

an abnormal number of contracts upon which it would be difficult for the Electro Film Corporation to secure play dates and which would be likely to result in wholesale cancellations.[2] At that time these contracts totaled 57% of the company's current year's sales volume. It was necessary, therefore, to determine a policy through which the company could effect an equitable settlement of unplayed contracts.

The Electro Film Corporation, a subsidiary of one of the largest completely integrated amusement enterprises in the United States, was engaged in the production and distribution of motion pictures. It owned and operated studios in Hollywood, California; maintained exchanges in the important key cities throughout the United States and Canada; and through an affiliated company controlled a large nation-wide chain of theaters.

By the terms of the Standard Exhibition Contract used by the Electro Film Corporation, the company could enforce full payment on contracts outstanding, irrespective of whether or not the pictures were played. This contract, which was used by all distributors that were members of the Motion Picture Producers and Distributors of America, Incorporated, provided:

> If the exhibitor fails to make any selection within 14 days after the mailing of the available dates of any photoplay, then the Distributor may at any time designate the exhibition date or dates thereof, which date or dates shall not be prior to the available date, by mailing notice thereof at least 14 days before such exhibition date or dates; and if any such photoplay shall have been exhibited by any other exhibitor having a "run" prior in point of time and immediately preceding the "run" specified in the Schedule granted to the Exhibitor, then the Distributor shall designate the exhibition date or dates thereof, which shall be within a period of 45 days commencing with the available date. In case the exhibition date or dates of any of the photoplays shall be designated by the Distributor pursuant to this paragraph, "the period of protection," if any, specified in the schedule, shall begin upon the fifteenth (15th) day of the 30-day period specified in paragraph 2 of this article.

Enforcement of contracts was secured by arbitration through a mechanism set up by the Film Board of Trade.[3] The executives of the Electro Film Corporation, however, did not favor the use of any collection policy that might incur the ill will of their

[2] See FBO Productions, Incorporated, page 391.
[3] See Arbitration in the Motion Picture Industry, page 642.

accounts, and thereby handicap the company in its sales efforts for the coming year.

For several reasons the company was particularly anxious to retain the exhibitors' goodwill. The Electro Film Corporation had made material changes in the type of product which it was producing for the coming year. Whereas its former efforts had been largely directed toward inexpensive silent pictures, a majority of which were of the type known as "action" pictures, the new program called for a number of high quality talking and musical special features. As a result, the company would be selling its product for first and second run to a somewhat different group of theaters than it formerly had sold to. Its established accounts, formerly sold on a first-run basis, would be solicited for third-, fourth-, and subsequent-run contracts.

The company's treasurer believed that to resort to any stringent collection policy might have an unfavorable effect on the new market which the company planned to enter. It was his contention, furthermore, that should the company endeavor to enforce collection by arbitration, a majority of the accounts so affected would resort to unfair methods of escape or declare bankruptcy. He based this assertion on the generally accepted belief that from 3,000 to 4,000 small exhibitors would retire from the field temporarily,[4] or until the cost of sound equipment had been reduced appreciably.

Two alternatives were suggested as possible solutions to the company's problem. The first involved the usual procedure of trading out on the next year's product. "Trading out" was a term used in the industry to designate the substitution of new pictures for old in drawing up contracts for a new season. As a rule, before motion picture companies resorted to trading out, they endeavored to induce their exhibitors to complete their existing contracts. This had been accomplished with some success by two different methods. By one method, the various exchange bookers were instructed to place all emphasis on the completion of undated and unplayed contracts. Under the other plan, this function was performed by the entire salesforce, which was relieved temporarily from regular selling duties. The executives of the Electro Film Corporation believed that practically all its competitors would adopt a trading out policy. Both the

[4] See *Motion Picture News*, June 15, 1929, page 2191.

general sales manager and the treasurer, however, were inclined to doubt the merits of this plan for the following reasons. Many of the company's present exhibitors would perhaps close their doors during the following ten months. If a total of 57% of the current year's sales volume was traded out, the next year's sales would be handicapped seriously. The new type of Electro productions was much more valuable than the old; on this account, and because of the problem created by a change in the run status of the present exhibitors, it would be difficult to effect an equitable trade out policy. Finally, under this method the company's cash position would be weakened, and as a result large loans from outside sources would be necessary to finance current productions.

The second alternative involved the use of cash discounts. In suggesting this plan, the treasurer estimated that cancellations would start about May 1 and continue through the last four months of the theatrical year, which usually began about September 1. He proposed, therefore, that starting on May 1 and continuing through August the Electro Film Corporation should offer liberal cash discounts to all accounts as a means of effecting prompt payment of unplayed contracts. This discount would cover booked and unbooked accounts. Exhibitors who thus discounted their contracts by paying cash, would be free either to play the pictures covered by the contracts or to cancel any of the pictures which they did not wish to show. The amount of discount was to be determined for each theater as a unit, and would depend upon such conditions as usually were considered in the sale of motion pictures.[5] Discounts were not to be increased as the campaign reached its final stages. Local salesmen working in conjunction with their respective branch managers were to have complete authority on all matters pertaining to the application of the discount policy in their territories.

In proposing this plan, the treasurer stated his belief that in the next two years the success of motion picture companies would depend largely on their ability to dispose of unplayed inventories. Furthermore, he thought that trading out would not serve as a substitute for such disposal, because of the rapid introduction of such innovations as color and depth in pictures. He realized, however, that cash discounts had never been used in the sale of motion pictures, and while his proposal was to be

[5] See Wellington Theater, page 572.

used as a temporary expedient only, it might constitute an undesirable precedent. Although a majority of the company's executives doubted its success, the treasurer's plan was adopted.

To insure the plan against failure the sales department of the Electro Film Corporation was organized for immediate action. The time element naturally limited the executives in their development of minute campaign details. "Ballyhoo," characteristic of the motion picture industry, was to be avoided entirely. Instead, the company's salesmen were to approach their respective exhibitors on a businesslike basis, and sell the discount policy on its merits only.

Because of the diverse conditions surrounding the various exhibitors, salesmen were instructed to make a thorough analysis of the status of each. It was necessary for them to become well acquainted with their exhibitors and to learn about the exhibitors' cash position, credit standing, bookings, unplayed time, and all other important factors that might influence the exhibitors' present and future success. In order to effect a proper analysis, the company's salesmen had to learn something about motion picture accounting and in particular the use of the sales control methods of the Electro Film Corporation.

The general sales manager and the treasurer realized that an incentive was necessary to insure the plan a maximum amount of sales effort. Consequently they set up bonus quotas for each exchange for the months of May, June, July, and August. These quotas, known as cash receipts quotas, were based on the previous year's cash receipts for these months, plus a flat increase of approximately 37%. On the basis of his ten years' experience in the sale of motion pictures, the sales manager believed that this amount represented a maximum equitable quota. The local managers subdivided exchange quotas for their respective salesmen. In the establishment of exchange quotas, consideration was not given to the relative position of each exchange with regard to the proportion of its played to unplayed time, nor to its current cash position as contrasted with the same period in previous years. Bonuses were based on cumulative results of the 16 weeks' campaign. Quotas were so arranged as to render accessibility of the quota easy for the first three months, and difficult during the last month. Practically all exchanges and salesmen had attained their established quotas by the end of the four-month period.

The cost of synchronized pictures and sound equipment, or the lack of such equipment, had placed many exhibitors in weakened cash positions. The additional fee charged for synchronization, known in the industry as "score charges," represented the greater portion of the difference between the cost of silent and sound pictures. The executives realized that unless some sort of financial aid was extended to these exhibitors, they could not take advantage of the company's cash discount policy. Consequently, exchange managers were instructed to interview banks throughout their territories and arrange with them for loans to exhibitors. The Electro Film Corporation did not guarantee the payment of exhibitors' notes, but bankers were induced to make loans on exhibitors' collateral, and more especially on the saving made possible by the discount on the future increased earnings which should result from the exhibition of the new Electro pictures.

The treasurer of the Electro Film Corporation believed that these loans would not handicap the exhibitors' ability to pay for the next season's pictures. He recognized the possibility of such a predicament, but reasoned that the box office value of the new Electro pictures would be such as to enable exhibitors to pay both their notes and current film costs.

The results derived from the discount policy were more than satisfactory. The established cash receipts quotas were exceeded by 10%. Total booking losses from cancellations approximated only 12% of gross sales, whereas under normal conditions booking losses from cancellations ranged between 17% and 20%. The net cash loss on contracts was about 20%. Because of its greatly strengthened cash position, however, the Electro Film Corporation was in a position to finance production with only a minimum of outside financial assistance, and as a result the estimated actual loss resulting from discounts was less than 10%. These estimates were based on the assumption that the company could have forced collection on all outstanding contracts: an impossibility, for reasons stated heretofore.

Aside from the direct financial results, the company derived many advantages of significant value. Inventories of unplayed and undated time were reduced to a minimum never before attained by the Electro Film Corporation. This situation naturally cleared the way for the sale of the new Electro pictures and made it possible for the company's salesforce to book these

pictures up to 90% of total sales, whereas in the past, undated contracts, at a similar period in the theatrical year, had amounted to as much as 55% of total sales. At the same time the plan enabled the salesmen to make contacts with new accounts, with a resultant increased sales volume for 1929–1930, the percentage of which, over and above the sales quota set for the new Electro pictures, more than offset the 12% loss from cancellations.

The effect of the campaign on the entire sales organization was favorable. It added new stimulus during the dullest season in the theatrical year, an especially important feature in 1929 because of the demoralizing effects that competitors' sound pictures had exerted on the company's salesforce. Salesmen, because of their recent study of each exhibitor's situation, were able to select only the most desirable accounts for the new product. The momentum created by the campaign, furthermore, was of material help in selling these accounts, and in the general introduction of the new Electro pictures.

Commentary: This company was confronted by threatened heavy cancellations due to the advent of sound pictures. The company was not desirous of forcing payment by exhibitors either through the customary arbitration machinery or through the courts. On the other hand, it was extremely anxious to secure as large a part of the rentals due as possible, without sacrificing the goodwill of the exhibitors. This regard for the goodwill of exhibitors was considered particularly important by the Electro Film Corporation. The problem was complicated by the company's decision to reduce the number of its pictures while materially improving their quality. To accomplish its end it offered a substantial though varying price reduction to those exhibitors who would make an advance payment on unplayed contracts. The company adopted this policy as an alternative to the usual method of trading out on last year's product. The reasons urged against trading out are indicated in the case.

The reasoning, however, by which the treasurer arrived at the decision to offer so-called cash discounts is not so clear. He argued that one reason for not trading out was that the new product was more valuable than the old, and that this change would result in a change in the run status of the present exhibitors. He further argued that a trading-out policy would result in heavy cancellations and would have an unfortunate effect on the sale of the new pictures. This reasoning appears inconsistent. It should be remembered that many small exhibitors were not equipped for sound pictures. Consequently

the new product could not be shown in their theaters at all. In the second place, if the run status were changed, it would not be likely that the old exhibitors would be in a position to run the new Electro pictures for some time anyway. Even when the pictures were purchased for such subsequent runs, the prices would be substantially less. Bearing in mind, therefore, that the pictures covered by the contracts under consideration were silent instead of sound, were generally sold to small and subsequent-run theaters, and were not of particularly high quality, it is difficult to see wherein the sale of the new pictures would be adversely affected.

On the other hand, while the reasoning of the treasurer is thus subject to fundamental criticism, there is something to be said for the policy which was adopted. The exhibitors doubtless reasoned that they would not be in the market for the newer and higher-price Electro pictures for some time to come. Those exhibitors whose theaters were not wired for sound believed themselves committed to silent pictures at the same time that they were wondering whether or not there would be an adequate supply of these pictures. They were in the position of being compelled to run the Electro pictures which they had purchased and yet were given an opportunity to reduce substantially their rentals. Obviously, therefore, if by any means they could secure funds with which to make the advance payment they were justified in doing so. From the Electro Film Corporation's point of view, the company was following a practice comparable to that of cleaning up out-of-style merchandise at bargain prices. The company's cash position, furthermore, was substantially strengthened; hence smaller loans were necessary and a saving in interest was made possible.

It may be noted that in selling the new Electro pictures the salesforce was able to book these pictures with definite dates up to 90% of the total sales. It was not likely that the problem, therefore, would recur. Salesmen, furthermore, were able to secure many new accounts. Obviously these were not among those from whom the company had feared cancellations.

It appears, therefore, from the evidence in the case that the policy was successful. Its success, however, was probably due to factors quite distinct from those in the mind of the treasurer at the time the policy was adopted.

November, 1929 H. T. L.

Educational Pictures, Incorporated

PRODUCER AND DISTRIBUTOR—MOTION PICTURES

Marketing Organization—*Consolidation with Competitors to Maintain Sales.* A company producing short educational films, comedies, and newsreels, and controlling no theaters, was confronted with the problem of meeting the competition of other companies producing full lines of films and controlling theaters. The president of the company considered the following possible means of meeting this competition: producing an increasing proportion of informational and educational films; engaging in intense competition with competitors on a quality basis; forming a price agreement with other producers of short films; and effecting a consolidation with the company's two leading competitors. The latter plan the president considered the most satisfactory solution. (1928)

Educational Pictures, Incorporated, had been producing and distributing films nationally for 13 years prior to 1928. It produced only short films. As indicated in Exhibits 1, 2, and 3,

Exhibit 1

Annual Net Profits of Educational Pictures, Incorporated, for Years 1923–1927*

(Figures from June 30 to June 30)

1923–24	$344,619
1924–25	610,805
1925–26	748,183
1926–27	753,737

* Source: 1928 Film Year Book, p. 806.

Exhibit 2

Number of Theaters Buying Educational Pictures, Incorporated, Productions, 1923–1927*

1923–24	7,100
1924–25	8,500
1925–26	10,100
1926–27	13,000
1927–28 (part)	13,587

* Source: 1928 Film Year Book, p. 806.

its production had shown a steady growth; the number of theaters exhibiting its pictures had increased; its profits had been satisfactory and were increasing. Previous to 1927, some competition already existed in the production and distribution of short films.

Comedies, cartoons, and similar short subjects had been distributed by FBO Productions, Incorporated, the Fox Film Corporation, Pathe Exchange, Incorporated, the Universal Pictures Corporation, and several small producing companies, all of which were producers of feature pictures. In the newsreel field, the Fox Film Corporation had released Fox News; the Universal Pictures Corporation, International Newsreel; and Pathe Exchange, Incorporated, Pathe News. This competition was increased with the decisions, in 1927, of two leading feature film producers to release short films. These decisions were based on a desire to be able to offer exhibitors a complete line of films, including feature pictures, comedies, and newsreels. In 1928 the executives of Educational Pictures, Incorporated, were considering the best means of meeting this increased competition.

Exhibit 3

Annual Gross Takings of Educational Pictures, Incorporated, 1924–1927*

Two-reel and Single-reel Comedy Product	
June 28, 1924, to June 27, 1925	$4,095,610.06
June 27, 1925, to June 26, 1926	3,941,747.98
June 26, 1926, to July 2, 1927	4,528,424.31
Kinograms	
June 28, 1924, to June 27, 1925	$ 549,452.90
June 27, 1925, to June 26, 1926	750,052.46
June 26, 1926, to July 2, 1927	639,896.49

* These figures show gross totals of contracts made and not actual gross cash takings. The cash, paid at time of exhibition, was often received a year or more after the contract was signed. There might be deductions from contractual business because of closed theaters, etc.

The seriousness of the competitive situation was increased by several other factors. One of these was the increasing use by the larger motion picture theaters of so-called "presentation" or vaudeville acts which were taking the place of some short films. In some sections of the United States, furthermore, there was a growing popularity of double-feature programs, which reduced the time available for short films. The acquisition of motion picture theaters by several companies producing full lines of films also limited the market for short films distributed by companies such as Educational Pictures, Incorporated, which controlled no theaters.

Educational Pictures, Incorporated, had been established originally as the Educational Film Corporation of America, in 1915, with the intention of developing the production and distri-

bution of purely educational films. A short trial had convinced the company that there was not, at that time at least, a sufficient demand for this type of films to make possible profitable production. It turned, therefore, to the production of all types of short films, including comedies, newsreels, and a few educational films. By 1927 it was the third largest producer of short films in the United States. It was the only large national producer that released only short films. It had a strong financial position and adequate support from banking institutions to assure sufficient funds for any program of reasonable proportions.

Educational Pictures, Incorporated, was a holding company which controlled several companies producing the films released under its name, and owned 100% of the stock of Educational Film Exchanges, Incorporated, a distributing company. Educational Film Exchanges, Incorporated, owned 30 exchanges in the United States and 6 in Canada through which films were distributed to exhibitors. When these exchanges originally had been organized by Educational Film Exchanges, Incorporated, a minority interest in each one had been sold to local theater owners. On February 14, 1927, Educational Pictures, Incorporated, had purchased these minority interests by exchanging shares of its common stock for the minority stock in the individual exchanges.

Of the total number of films produced by the company, about 83% had been comedies, about 15% newsreels, and about 2% educational subjects. For the 1927–1928 season the company had released 159 short films, which were mostly comedies, and 104 issues of newsreels. Its comedies were one and two reels in length and included many of the slap-stick variety, which were, according to the president of the company, its most popular and most profitable releases in all sections of the United States. The company released two issues of newsreels each week under the name "Kinograms."

The president of the company estimated that Kinograms had been costing previous to 1927 about $7,000 per week. The company's comedies were costing on the average $20,000 each. The production costs of the comedies of some series averaged more than this amount, although one of the most successful series was being produced at an average cost per picture of $13,500. One of the company's competitors, which also produced feature films, was known to be producing comedies at an average cost of $6,000

each. About 95% of the films released by Educational Film Exchanges, Incorporated, were produced by subsidiary companies and 5% purchased from outside companies.

In 1927 the films of Educational Pictures, Incorporated, were being exhibited by approximately 13,000 theaters throughout the United States. These 13,000 theaters were reached by a force of 100 salesmen working out of 30 exchanges. The efforts of these salesmen, of the exchange managers, and of the central sales and advertising force in the New York office, were concentrated first on the large theater chains, secondly, on individual first-run houses, and, lastly, on the smaller theaters. All classes of exhibitors were solicited by the company's salesmen.

The salesforce was under the control of the general sales manager, whose office was in New York. The individual salesmen in the field were under the control of the managers of the exchanges. The managers of the exchanges reported directly to the general sales manager. The company also had a sales manager for Kinograms, who was independent of the general sales manager, who had no control over salesmen, and whose duties were to promote the sale of Kinograms in every way possible. He developed special selling methods, made inspection trips to the different exchange offices, talked to the salesmen, trained them in methods of selling newsreels, and called on exhibitors. All salesmen sold comedies, newsreels, and other releases. The general sales manager was responsible for the sale of all products.

The salesmen of Educational Pictures, Incorporated, sold films at the best bargaining prices they could obtain. This practice was common throughout the industry. There was no established price save that determined by the broad limitations of what the exhibitor could afford to pay and what the company would accept. The exact price depended to a considerable extent upon the relative bargaining ability of the salesman and the exhibitor. Any contract entered into by the salesman was, however, considered as only tentative until a confirmation signed by the New York office had been sent to the exhibitor. This practice enabled the New York office to reject contracts which provided too low returns to be acceptable to the company. The problem of credit was of minor importance, since all exhibitors paid for their films in advance of delivery.

Most sales were for more than one film or series of films, and many of them were for most of the company's product, although occasional sales of individual films were effected. At all times a small amount of spot booking took place. Spot bookings were film purchases, usually made in an emergency, for immediate delivery.[1] Short films were usually designated either by the name of the comedy series or as Kinogram newsreels, no account being taken of the names of the individual films.

On June 1, 1927, at the beginning of the 1927–1928 season, the Paramount Famous Lasky Corporation and the Metro-Goldwyn-Mayer Pictures Corporation, two large and successful producers of feature films possessed with sufficient financial strength to be unhampered in any new activity, added to their lines short films, consisting of comedies, novelties, and newsreels, which enabled them to offer their exhibitor customers a complete service.

For several years both these companies had been producing feature films, chiefly in their own studios. They had distributed their films through their own exchanges in 35 or 40 important cities. They also had acquired chains of theaters in order to furnish a partial outlet for their films. The Paramount Famous Lasky Corporation, through two subsidiary organizations, the Publix Theaters Corporation and Balaban & Katz Midwest Theaters, Incorporated, controlled a chain of several hundred theaters. The Metro-Goldwyn-Mayer Pictures Corporation was also affiliated with a chain theater company. The managers of the theaters in these chains were free to buy in limited quantities from competitors and had in the past exhibited each year a substantial number of the films of Educational Pictures, Incorporated.

In 1927 both the Paramount Famous Lasky Corporation and the Metro-Goldwyn-Mayer Pictures Corporation signed production contracts with several comedy producers. One of these producers had been formerly under contract to Educational Pictures, Incorporated. The Paramount Famous Lasky Corporation production program for 1927–1928 called for 52 two-reel comedies, 52 half-reel cartoons, and 104 newsreels. The production program of the Metro-Goldwyn-Mayer Pictures Corporation for the same period called for 25 one-reel comedies, 46 two-reel

[1] See Federal Trade Commission *v.* Famous Players-Lasky Corporation, p. 226.

comedies, and 104 newsreels. Exhibits 4 and 5 list the short films released by these companies in 1927 and 1928.

EXHIBIT 4

SHORT FILMS RELEASED BY METRO-GOLDWYN-MAYER PICTURES CORPORATION IN 1927 AND 1928

	Films	Reels
All Star-Roach Comedies	10	2
Chase-Roach Comedies	10	2
Davidson Series—Max	10	2
Great Event Technicolor Dramas	6	2
-G-M News	104	1
Oddities (Novelties)	25	1
Our Gang—Roach Comedies	10	2
	175	

EXHIBIT 5

SHORT FILMS RELEASED BY PARAMOUNT FAMOUS LASKY CORPORATION IN 1927 AND 1928

	Films	Reels
Adams Comedies*	8	2
Christie Comedies*	12	2
Dooley Comedies*	8	2
Horton Comedies	6	2
Inkwell Cartoons	26	½
Krazy Kat Cartoons	26	½
Paramount News	104	1
Paramount Novelties	10	2
Vernon Comedies*	8	2
	208	

* These comedies were produced by the Christie Film Company, formerly under contract to Educational Pictures, Incorporated.

Both these companies planned to distribute their short films through their existing exchanges, the Paramount Famous Lasky Corporation using the same salesmen that were handling its feature films, and the Metro-Goldwyn-Mayer Pictures Corporation organizing a separate force of short-film salesmen at each exchange. All contracts secured by these companies' salesmen were to be referred to the New York offices for confirmation. These two companies expected to be able to satisfy the needs of

their own chains of theaters for short films and also to sell to other theaters in competition with Educational Pictures, Incorporated, and other similar producers. With independent theaters their ability to offer a complete program was expected to be an effective means of meeting competition.

The president of Educational Pictures, Incorporated, was convinced, after 11 years in the short film business, that it was a more difficult task to produce a good comedy than to make a good feature film. The comedies of this company were costing an average of only $20,000 each as against the several hundred thousand dollars each which the better feature films cost; and yet human talent capable of producing a successful comedy was much more scarce, in his opinion, than that available for the production of feature films. New talent was not easily developed. Only by constant attention to the comedy value of every action, furthermore, could amusing comedy be assured. The comedy could not, like the feature picture, depend for a part of its success upon the plot and suspense of the story. "Gag men" who were capable of creating enough humorous situations to make a good comedy picture, were not numerous.

Realizing the difficulty in securing good comedy talent, the executives of Educational Pictures, Incorporated, for several years had been attempting to gather together the best of such talent available until the company had what its executives considered to be the best organization in the motion picture industry for producing comedies. In the mind of the president of the company, this was one of the significant factors in the attainment of the company's position in the industry and one of its strongest bulwarks against the threatened competition.

Inasmuch as Educational Pictures, Incorporated, had under its control, through subsidiary producing units and through contracts, only a portion of the producers of its comedies, the entrance of the Paramount Famous Lasky Corporation and the Metro-Goldwyn-Mayer Pictures Corporation into this field meant aggressive competition and bidding for the services of comedy talent. The scarcity of such talent increased the severity of this competition. The Paramount Famous Lasky Corporation was releasing for the 1927–1928 season four series of comedies that had formerly been released by Educational Pictures, Incorporated. The company producing these comedies was receiving a considerably

higher price from the Paramount Famous Lasky Corporation than it had been receiving from Educational Pictures, Incorporated.

This added competition was an even more important factor in connection with newsreels. Whereas the company in the past had been spending about $7,000 a week on Kinograms, it was in 1927–1928, because of the added competition, spending about 25% more, with every prospect that this expense would continue to increase. Prior to 1927 important news events had been covered by four companies with great duplication of expense. With the entrance of two additional companies into this field, they were covered by six companies with even greater duplication. In their bidding for news camera men and other news-gathering personnel, in their increasing attempts to reach the more unusual news events, and in their efforts to gain speed in getting news pictures to the screen, these companies were adding to their expenses day by day.

The competitive problem resulting from the entrance of the Paramount Famous Lasky Corporation and the Metro-Goldwyn-Mayer Pictures Corporation into short film production was, however, in the opinion of the officers of Educational Pictures, Incorporated, not so serious in the field of production as it was in that of sales and pricing. In this field, in which salesmen were given only approximately fixed prices and were striving to obtain as much as possible from each exhibitor, the president believed that a salesman trained to sell feature films but unacquainted with short films and their probable prices would be at a disadvantage in bargaining with the exhibitor and as a result would accept less than he should for these films. The salesmen of the two companies which had begun the production of short films, apparently were not able to use their past experience to help them in estimating the probable price of short films by taking any set proportion of the price paid for feature films, because in practice the amount paid for a short film varied from 10% to over 100% of the price paid for the feature film.

The exhibitors were taking advantage of the low prices at which they were able to secure short films from the salesmen of the Paramount Famous Lasky Corporation and the Metro-Goldwyn-Mayer Pictures Corporation to force the salesmen of Educational Pictures, Incorporated, to accept lower prices, which were frequently so low that they left no profit for the company.

In one case, typical of others known to the company, a salesman of the Paramount Famous Lasky Corporation had sold a standard short-reel film to a small theater for $10 when Educational Pictures, Incorporated, had been securing $60 for a similar product.

In the newsreel field the added newsreels had caused an overproduction which had the effect of materially decreasing the gross revenue received by the company. With six companies, all covering approximately the same news events and all attempting to sell newsreel films to as many exhibitors as possible in the short time in which these films were salable, the exhibitors were taking advantage of their bargaining power and offering lower and lower prices.

Another serious phase of this new competition was that while the company owned no theater outlets, the two new competitors were affiliated with chains of theaters to which Educational Pictures, Incorporated, had been making a large number of sales. Of the 13,000 accounts to which the company's 1927–1928 product was being sold, about 1,000 were theaters belonging to the larger and more important theater chains and about 1,200 belonged to smaller and less important chains. About 600 of its accounts were with theater chains controlled by feature companies producing short films. Fifteen hundred of its accounts, which were formerly independent, in 1928 were affiliated with chains, and of this number 450 were affiliated with chains controlled or influenced by producing companies. Figures showing the gross revenue derived by the company from chains controlled by the two new competitors were not available, but it was estimated that about 9% of the gross revenue during 1927 had been derived from sales to theaters controlled by the Paramount Famous Lasky Corporation and a somewhat smaller percentage from sales to theaters allied with the Metro-Goldwyn-Mayer Pictures Corporation.

It was apparent that in the future, sales to these two chains would be reduced considerably. The general sales manager of Educational Pictures, Incorporated, believed that the Metro-Goldwyn-Mayer Pictures Corporation was producing a sufficient supply of short films to satisfy the entire demand of its allied theaters. Most of its theaters were vaudeville houses and had only a small demand for short films. The Publix theaters, owned by the Paramount Famous Lasky Corporation, were, on the other hand,

almost all motion picture houses and had need for more short films than those produced by the parent company. Many of the Publix theaters had vaudeville numbers on their programs.

The president of Educational Pictures, Incorporated, had considered several means of meeting the new competition. He had thought of producing an increasing proportion of informational and educational films. He had considered putting forth greater effort to improve the quality of the company's films, thus engaging in intense competition with his competitors on a quality basis. He had contemplated a price agreement among producers of short films. He had also thought of effecting an amalgamation with his two new competitors. In view of the new competition, the president decided to produce fewer films until such time as he should decide upon one of these four means of meeting that competition. Exhibit 6 lists the releases of Educational Pictures, Incorporated, for 1926, 1927, and 1928.

EXHIBIT 6

RELEASES OF EDUCATIONAL PICTURES, INCORPORATED FOR 1926–1927 AND 1927–1928

	1926–27	1927–28
Newsreels—Kinograms	104	104
Comedies		
Cameo Comedies	24	26
Juvenile Comedies	6	8
Lloyd Hamilton Comedies—2-reel	8	8
Christie Comedies—2-reel	10	
Mermaid Comedies—2-reel	18	16
Tuxedo Comedies—2-reel	6	6
Larry Semon Comedies—2-reel	...	8
Bobby Vernon Comedies—2-reel	8	
Jimmy Adams Comedies—2-reel	6	
Lupino Lane Comedies—2-reel	6	8
Billy Dooley Comedies—2-reel	6	
Charlie Bower Comedies—2-reel	...	6
Dorothy Devore Comedies—2-reel	...	6
Miscellaneous		
Lyman H. Howe's Hodge Podge—1-reel	12	12
Specials (Hope Hampton)—2-reel	2	2
Felix the Cat (cartoons)—1-reel	26	26
Curiosities—1-reel	12	12
McCall Color Fashion News—2-reel	...	2
Romance Productions—2 reel	3	
Life Cartoons—1-reel	20	
Bruce Scenics—1 reel	12	13
	289	263

The first plan to receive the president's attention was that of releasing an increasing proportion of the informational type of films which the company had originally been organized to produce. Although he had made no analysis of the possible market for such films, he had watched developments in that field closely and was convinced that the time had not yet arrived when such films could be developed profitably. About 200 companies had been organized during and after the war for the purpose of producing and distributing educational and informational films. Most of these companies since that time had gone out of business. There were, however, several of the stronger companies still active.

The president also had considered concentrating the energies of the production department upon an effort to improve the quality of the company's products. In the past the company had made an effort to produce high quality films and the president believed that the product was already better than that of its competitors. He further believed that the company could continue to produce a higher quality of films than its competitors, regardless of any efforts which they might make to overcome this handicap. To attempt intensively to improve quality, however, would result in much added expense and perhaps a net loss for a year or two. The company was prepared to stand this loss and believed that the resulting improvement in its pictures would cause a material increase in sales, but the president considered it a wiser plan to continue the less intensive and more constant program of improvement that was then being followed.

Inasmuch as the new competition presented a particularly difficult problem in pricing, the president was also led to consider a simple price agreement. The personnel of the company's salesforce was acquainted with the prices paid by almost all types of theaters for short films, while it was believed that no one in the salesforces of the Paramount Famous Lasky Corporation and the Metro-Goldwyn-Mayer Pictures Corporation had had any experience in this matter. To help these two companies obtain the prices to which they were entitled at current price levels and thus eliminate the serious effects of the involuntary price cutting, the president considered effecting agreements with these companies for placing one of the men from his sales department in the contract division of the sales department of each

company; these men would give the salesmen of the two companies the benefit of their knowledge of the prices usually paid by exhibitors. This plan would enable the company's competitors to refuse contracts that brought too low returns. The president had given the legal and other aspects of this proposal some attention but had not gone into it in detail, since he favored a more effective means of meeting the competition and of strengthening the position of his company in the short film field.

The program which the president hoped to carry out as a solution to his problem was one of consolidation. He proposed to sell to the Paramount Famous Lasky Corporation and to the Metro-Goldwyn-Mayer Pictures Corporation a minority stock interest in Educational Pictures, Incorporated, and to secure their agreement to stop their production of short films and to turn their production contracts over to Educational Pictures, Incorporated. They would then be free to buy the short films needed for their theaters from any producer they desired, as in the past, or they could sign long-term contracts with Educational Pictures, Incorporated. Holding an interest in Educational Pictures, Incorporated, they would share with it directly the profits gained through cooperation, whereas under the existing circumstances they had to share the losses which accompanied severe competition.

According to the president's plan, if an agreement was secured to this combination and Educational Pictures, Incorporated, assumed the production contracts of these two companies, Educational Pictures, Incorporated, would sign 10-year contracts both with independent producers of short films and with its own subsidiary producing companies. In this manner, it would gain control of these trained producer units against future competitive attempts.

Commentary: This case presents the problem of a producer confronted by substantial changes in the character of the competition which he was to face. In this problem these changes were three in number: first, the development of large chains of theaters by those companies which had formerly bought extensively from Educational Pictures, Incorporated; second, the adoption of a policy by the large producer-distributors of producing a complete program within their own organization, including short subjects as well as features; and third, the development by various competitors, as a part of the aforementioned policy, of their own newsreel service. Whether or not these changes

in policy were wise is somewhat beside the point. The fact was that they existed and were in considerable measure beyond the control of Educational Pictures, Incorporated.

The control of a chain of theaters by a company producing only short subjects would obviously be unwise if those theaters were acquired primarily as outlets. To adopt a policy of producing feature pictures would involve a complete change of production program, marking a complete reversal from the policy pursued thus far in the life of the corporation. The only alternative, therefore, was that of producing short subjects, particularly comedies, so substantially better than those produced by other companies as practically to render them a necessity to any exhibitor. The company contended that it was more difficult to make a good short comedy than a good feature picture. This may well be true. Furthermore, the supply of first-class comedy artists was distinctly limited. Considering the experience which this company had had in short subjects, it would appear that it had a distinct advantage in this field over many of its competitors.

It needs to be noted, however, that even if Educational Pictures, Incorporated, capitalized upon its past experience and upon its existing goodwill to the utmost, these assets would be of but temporary value unless the company constantly kept ahead of its competitors in quality of product. The company had but one line to sell and, considering competitive conditions, it could remain successful only so long as this line was clearly foremost in the field.

It should be remembered also that the most serious competition confronting Educational Pictures, Incorporated, arose from those companies that had entered upon the production of short subjects in order to be able to offer, especially to their own theaters, a complete program. If Educational Pictures, Incorporated, therefore, was to sell its product to those theaters, it was not sufficient that it offer short subjects that were merely somewhat better than those of its competitors. In order to maintain its preeminence in this particular market, its pictures would have to be so much better that the superior quality was more attractive to buyers than the advantages of securing a complete service. Since short subjects were usually considered of secondary importance in a program, being incidental to the feature picture, this margin of superiority would have to be even more marked.

The proposal that a minority stock interest in Educational Pictures, Incorporated, be sold to the Paramount Famous Lasky Corporation and the Metro-Goldwyn-Mayer Pictures Corporation, carries with it some interesting marketing possibilities, although in fact the proposal was not acted upon favorably. It would appear that, in return for this stock, the latter companies would agree to cease producing short films and turn over to Educational Pictures, Incorporated, their

contracts. The inference is that such an agreement could not be obtained by any other means. This may or may not have been the case. In any event, it would appear reasonable to conclude that a market price concession would be granted these two companies, either in the price of the stock sold to them, or in the price of the films subsequently marketed to them. It is not known how large such price concessions would have to be in order to induce these two companies to abandon their present policy. It is safe to assume that they would have to be rather substantial. In such a case, Educational Pictures, Incorporated, might be paying too large a price for the advantage gained, particularly if the concessions were made in the prices of the films sold, and if such sales represented a considerable part of the total sales of Educational Pictures, Incorporated. As a matter of business policy, the quality of the pictures it produced and the character of the sales promotion work which it carried on, were likely, in the long run, to provide a more satisfactory foundation upon which to build than were price reductions, particularly if such concessions were not founded upon a carefully planned basis.

November, 1929 H. T. L.

Educational Pictures, Incorporated[1]

PRODUCER AND DISTRIBUTOR—MOTION PICTURES

Merchandise Analysis—*Use of Distributors' Opinions.* A company producing and distributing short motion pictures was faced with the problem of deciding upon the production schedule for one year in advance. In order to analyze the popularity of the production of the preceding year, the company sent a questionnaire to the manager of each of its exchanges in the United States. A tabulation of the results of the answers proved of some value in determining the kind of films to be produced in the immediate future.

(1927)

Educational Pictures, Incorporated, was a producer and distributor of short motion pictures, selling to the national market in the United States and Canada. It had been releasing this type of product for 12 years prior to 1927. Early in that year the annual problem of deciding upon the production schedule for the year 1927–1928 required the attention and decision of the president.

The problem of deciding upon the production schedule was particularly difficult at this time because of the increased competition to be faced as a result of the decision of the Paramount Famous Lasky Corporation and of the Metro-Goldwyn-Mayer Pictures Corporation to produce short pictures in addition to feature pictures. Previous to 1927 these companies had produced only feature pictures.

In the motion picture industry the fiscal years of most companies were from June to June, and most producing companies began their production seasons in September. The distributing companies frequently began selling the new season's products as soon as they had been decided upon and announced by the producing companies, usually several months before the beginning of the production season. The fiscal year for Educational Pictures, Incorporated, began in June. Its distributing organization, Educational Film Exchanges, Incorporated, followed the

[1] For the history of the company, see Educational Pictures, Incorporated, page 101.

practice of selling the pictures as soon as the production program for the ensuing year was announced. This announcement usually was made in April or May. Actual production of films began in the summer and continued throughout the fiscal year.

The company released its pictures in several series, each of which was given a name and contained pictures of somewhat the same type. The name of the series was in several instances taken from the name of the star playing in that series. Releases for the years 1924–1927 are shown in Exhibit 1.

EXHIBIT 1

RELEASES OF EDUCATIONAL PICTURES, INCORPORATED, 1924–1927, BY FISCAL YEARS*

	1924–25	1925–26	1926–27
Newsreels—Kinograms	52	104	104
Comedies			
Cameo Comedies	25 (1-reel)	24	24
Juvenile Comedies	5 (2-reel)	5 (Big Boy)	6
Lloyd Hamilton Comedies—2-reel	7	6	8
Christie Comedies—2-reel	15	10	10
Mermaid Comedies—2-reel	15	18	18
Lyman H. Howe's Hodge Podge—1-reel	12	12	12
Tuxedo Comedies—2-reel	6	4	6
Clyde Cook Comedies—2-reel	2		
Jack White Comedies—2-reel	1		
Bobby Vernon Comedies	2	7 (2-reel)	8
Walter Hiers Comedies	2 (2-reel)	6	
Larry Semon Comedies	2	2	
Jimmy Adams Comedies		2 (2-reel)	6
Lupino Lane Comedies—2-reel		1	6
Billy Dooley Comedies—2-reel			6
Miscellaneous			
Sing Them Again Series—1-reel	7		
Bruce Wilderness Tales—1-reel	8		
Secrets of Life—1-reel	8	1	
Earl Hurd Cartoons—1-reel	4	9	
Specials—2-reel	1	3 (Hope Hampton)	2
Fun Shop	2		
Fables in color—1-reel		3	
Felix the Cat—1-reel		10	26
Judges Crossword Puzzles—1-reel		10	
McCall Color Fashion News—1-reel		1	
Romance Productions—2-reel			3
Life Cartoons—1-reel			20
Bruce Scenics—1-reel			12
Curiosities—1-reel			12
Total	176	238	289

* Source: 1924–25 and 1925–26 figures taken from Film Year Book; 1926–27 figures secured from company.

The results of the company's sales efforts for the years 1925 to 1927 had indicated a satisfactory increase, as shown in Exhibits 2 and 3.

EXHIBIT 2

TOTAL GROSS REVENUE OF CONTRACTS OF EDUCATIONAL PICTURES, INCORPORATED, FOR YEARS 1925–1927*

(Two-reel and single-reel)

Comedy Product	
June 28, 1924, to June 27, 1925	$4,095,610.06
June 27, 1925, to June 26, 1926	3,941,747.98
June 26, 1926, to July 2, 1927	4,528,424.31
Kinograms	
June 27, 1924, to June 27, 1925	$ 549,452.90
June 27, 1925, to June 26, 1926	750,052.46
June 26, 1926, to July 2, 1927	639,896.49

* These figures show gross totals of contracts made and not actual gross cash takings. The cash, paid at time of exhibition, was often received a year or more after the contract was signed. There might be deductions from contractual business because of closed theaters, etc.

EXHIBIT 3

GROSS REVENUE RECEIVED BY EDUCATIONAL PICTURES, INCORPORATED, FROM EACH OF SEVERAL SERIES OF COMEDIES, 1925–1927

	From Beginning of each Series to June 1, 1925	1925–26	1926–27
Cameo Comedies	$ 803,234	$ 331,974	$ 301,879
Christie Comedies	3,912,172	2,217,565	1,317,978
Lloyd Hamilton Comedies	988,102	418,118	451,981
Lyman H. Howe's Hodge Podge	283,992	132,813	121,322
Juvenile Comedies	409,167	297,879	316,451
Mermaid Comedies	3,472,119	1,060,375	902,641
Tuxedo Comedies	458,990	334,865	306,919

In March, 1927, following the usual procedure, the president of the company called a meeting of the executives of the New York office to decide upon the production program for the ensuing year. The men attending included the president, the vice president and assistant general manager, the general sales manager, the assistant general sales manager, the sales manager of "Kinograms," and a representative of the production department. At this meeting the company's products were discussed and suggestions presented to the president by each of the several department heads. All the executives were given an opportunity to voice their opinions and register their votes, although the president made the final decisions.

Besides being guided by experience, these men were influenced by letters received during the year from salesmen, exhibitors, and the general public, by the ideas expressed by others in the New York office, by suggestions received during the year from various sources, and by discussions among themselves. No compilation was made of the facts received from any of these sources.

Exhibit 4

Questionnaire Submitted to Exchange Managers by Educational Pictures, Incorporated

CIRCULAR LETTER 830 *TO ALL BRANCHES* *JANUARY* 27, 1927

MR. HAMMONS:

The following questionnaire covers my suggestions for two-reel comedies and one-reel subjects for the "S" product for release 1927–28.

TWO-REEL SUBJECTS

1. Should we continue releasing Mermaid Comedies?........................
   If So How Many?..
2. Should we continue releasing Christie Comedies?........................
   If So How Many?..
3. Should we continue releasing Juvenile Comedies?........................
   If So How Many?..
4. Should we continue releasing Bobby Vernon Comedies?....................
   If So How Many?..
5. Should we continue releasing Billy Dooley Comedies?....................
   If So How Many?..
6. Should we continue releasing Jimmy Adams Comedies?....................
   If So How Many?..
7. Should we continue releasing Tuxedo Comedies?........................
   If So How Many?..
8. Should we continue releasing Lupino Lane Comedies?....................
   If So How Many?..
9. How many two-reel subjects should we release in 1927–28?................

ONE-REEL SUBJECTS

1. Should we continue releasing Cameo Comedies?..........................
   If So How Many?..
2. Should we continue releasing Bruce Scenics?............................
   If So How Many?..
3. Should we continue releasing Hodge-Podge?..............................
   If So How Many?..
4. Should we continue releasing Felix the Cat?............................
   If So How Many?..
5. Should we continue releasing Curiosities?..............................
   If So How Many?..
6. Should we continue releasing Life Cartoons?............................
   If So How Many?..
7. How many one-reel subjects of all kinds should we release in 1927–28?......
8. Should we continue releasing Kinograms?................................
   If So How Many?..

Note: How many single-reel cartoon subjects should we release?..............
How many novelty one-reel subjects should we release?...............
How many one-reel comedies should we release?.......................

....
Branch

....
Manager

EXHIBIT 5

RESULTS OF ANSWERS TO QUESTIONNAIRE ON 1927–1928 PROGRAM SENT ON JANUARY 27, 1927, TO EXCHANGE MANAGERS BY EDUCATIONAL PICTURES, INCORPORATED

31 Exchanges*	% of Company's Distribution by Each Exchange	Kinograms		Christie		Bobby Vernon		Billy Dooley		Jimmy Adams		Tuxedo		Lupino Lane		Cameo	
		Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
Albany	1.25	1.25	....	1.25	....	1.25	....	1.25	....	1.25	....	1.25	....	1.25	....	1.25	
Atlanta	1.25	.....	1.25	.....	1.25	.....	1.25	1.25	....	.....	1.25	1.25	....	1.25	....	1.25	
Boston	6	6	....	6	....	6	....	.....	6	.....	6	6	....	6	....	6	
Buffalo	3	3	....	3	....	3	....	3	....	3	....	3	....	3	....	3	
Charlotte	1	1	....	1	....	1	....	1	....	1	....	1	....	1	....	1	
Chicago	8.25	8.25	....	8.25	....	8.25	....	8.25	....	8.25	....	8.25	....	8.25	....	8.25	
Cincinnati	3.25	3.25	....	3.25	....	3.25	....	3.25	....	3.25	....	3.25	....	3.25	....	3.25	
Cleveland	4.9	4.9	....	4.9	....	4.9	....	4.9	....	4.9	....	4.9	....	4.9	....	4.9	
Dallas	1.75	1.75	....	1.75	....	1.75	....	1.75	....	.....	1.75	....	1.75	1.75	....	1.75	
Denver	1	1	....	1	....	1	....	1	....	1	....	1	....	1	....	1	
Des Moines	1.50	1.50	....	1.50	....	1.50	....	1.50	....	.....	1.50	1.50	....	1.50	....	1.50	
Detroit	4	4	....	4	....	4	....	4	....	....	4	4	.....	4	....	4	
Indianapolis	3.25	3.25	....	3.25	....	3.25	....	.....	3.25	.....	3.25	3.25	....	3.25	....	3.25	
Kansas City	2.75	2.75	....	2.75	....	2.75	....	2.75	....	2.75	....	.....	2.75	2.75	....	2.75	
Los Angeles	3.4	3.4	....	3.4	....	3.4	....	3.4	....	.....	3.4	3.4	....	3.4	....	3.4	
Louisville	1.87	1.87	....	1.87	....	1.87	....	1.87	....	.....	1.87	1.87	....	1.87	....	1.87	
Milwaukee	2	2	....	2	....	2	....	2	....	.....	2	2	....	2	....	.....	2
Minneapolis	3.75	3.75	....	3.75	....	3.75	....	3.75	....	.....	3.75	3.75	....	3.75	....	3.75	
New Haven	2	2	....	2	....	2	....	2	....	2	....	2	....	2	....	2	
New Orleans	1.08	1.08	....	1.08	....	1.08	....	1.08	....	1.08	....	.....	1.08	1.08	....	1.08	
New York	13.25	13.25	....	13.25	....	13.25	....	13.25	....	.....	13.25	13.25	....	13.25	....	13.25	
Oklahoma City	1	1	....	1	....	1	....	1	....	1	....	1	....	1	....	1	
Omaha	1.25	1.25	....	1.25	....	1.25	....	.....	1.25	1.25	....	1.25	....	1.25	....	.....	1.25
Philadelphia	6	6	....	6	....	6	....	6	....	.....	6	....	6	6	....	6	
Pittsburgh	4.50	4.50	....	4.50	....	4.50	....	4.50	....	4.50	....	4.50	....	4.50	....	4.50	
St. Louis	2.25	2.25	....	2.25	....	2.25	....	2.25	....	.....	2.25	2.25	....	.....	2.25	2.25	
Salt Lake City	.75	.75	....	.75	....	.75	....	.....	.75	.....	.75	.75	....	.75	....	.75	
San Francisco	3.9	3.9	....	3.9	....	3.9	....	3.9	....	3.9	....	3.9	....	3.9	....	3.9	
Seattle	3.6	3.6	....	3.6	....	3.6	....	.....	3.6	.....	3.6	3.6	....	3.6	....	3.6	
Washington	3	3	....	3	....	3	....	.....	3	.....	3	3	....	3	....	3	
Canada	3.25	.....	3.25	3.25	.....	3.25	....	3.25	....	.....	3.25	....	3.25	3.25	....	3.25	
Percentage of Favorable Votes	.....	95.50		98.75		98.75		82.15		39.13		85.17		97.75		96.75	

EXHIBIT 5 (Continued)

31 Exchanges*	Bruce		Hodge Podge		Curiosities		Life Cartoons		Mermaid		Felix the Cat		Juvenile		Suggested Number of Two-reelers	Suggested Number of One-reelers
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No		
Albany	1.25	....	1.25	....	1.25	....	....	1.25	1.25	....	1.25	....	1.25	....	78	84
Atlanta	....	1.25	1.25	....	....	1.25	....	1.25	1.25	....	1.25	....	1.25	....	52	64
Boston	....	6	6	....	....	6	....	6	6	....	6	....	6	....	52	62
Buffalo	....	3	3	....	....	3	....	3	3	....	3	....	3	....	74	62
Charlotte	....	1	1	....	....	1	....	1	1	....	1	....	1	....	80	80
Chicago	8.25	....	8.25	....	8.25	....	....	8.25	8.25	....	8.25	....	8.25	....	62	168
Cincinnati	....	3.25	3.25	....	....	3.25	....	3.25	3.25	....	3.25	....	3.25	....	64	64
Cleveland	4.9	....	4.9	....	4.9	....	4.9	....	4.9	....	4.9	....	4.9	....	74 or 78	112
Dallas	....	1.75	....	1.75	1.75	....	1.75	....	1.75	....	1.75	....	1.75	....	52	90
Denver	1	....	1	....	....	1	....	1	1	....	1	....	1	....	80	75
Des Moines	....	1.50	1.50	....	1.50	....	....	1.50	1.50	....	1.50	....	1.50	....	64	74
Detroit	....	4	4	....	....	4	....	4	4	....	4	....	4	....	64 to 70	64
Indianapolis	....	3.25	3.25	....	3.25	....	3.25	....	3.25	....	3.25	....	3.25	....	60	100
Kansas City	....	2.75	2.75	....	2.75	....	....	2.75	2.75	....	2.75	....	2.75	....	72	102
Los Angeles	3.4	....	3.4	....	3.4	....	....	3.4	3.4	....	3.4	....	3.4	....	62	78
Louisville	1.87	....	1.87	....	....	1.87	....	1.87	1.87	....	1.87	....	1.87	....	60	70
Milwaukee	2	....	2	....	2	....	2	....	2	....	2	....	2	....	74	52
Minneapolis	....	3.75	3.75	....	....	3.75	....	3.75	3.75	....	3.75	....	3.75	....	72	62
New Haven	....	2	2	....	2	....	....	2	2	....	2	....	2	....	68	84
New Orleans	....	1.08	1.08	....	....	1.08	....	1.08	1.08	....	1.08	....	1.08	....	62	74
New York	....	13.25	13.25	....	13.25	....	....	13.25	13.25	....	13.25	....	13.25	....	72	102
Oklahoma City	....	1	1	....	....	1	....	1	1	....	1	....	1	....	72	64
Omaha	1.25	....	1.25	....	1.25	....	....	1.25	1.25	....	1.25	....	1.25	....	60	88
Philadelphia	....	6	6	....	6	....	....	6	6	....	6	....	6	....	54	74
Pittsburgh	....	4.50	4.50	....	....	4.50	....	4.50	4.50	....	4.50	....	4.50	....	60	64
St. Louis	....	2.25	2.25	....	....	2.25	2.25	....	2.25	....	2.25	....	2.25	....	52	88
Salt Lake City	....	.75	....	.75	....	.75	....	.75	.75	....	.75	....	.75	....	54	52
San Francisco	....	3.9	3.9	....	3.9	....	....	3.9	3.9	....	3.9	....	3.9	....	74	104
Seattle	....	3.6	3.6	....	....	3.6	....	3.6	3.6	....	3.6	....	3.6	....	52 to 60	62
Washington	3	....	3	....	3	....	....	3	3	....	3	....	3	....	56	80 to 90
Canada	....	3.25	3.25	....	....	3.25	....	3.25	3.25	....	3.25	....	3.25	....	62	62
Percentage of Favorable Votes	26.92		97.50		58.45		14.15		100		100		100			

Note: Each exchange manager's answer is indicated by inserting the percentage of the company's total distribution handled by his exchange in either the "Yes" or the "No" column under the name of each series of releases.

* The company had 36 exchanges, 30 in the United States and 6 in Canada. For this table the Canadian exchanges, which voted as a unit on each question, were combined.

In January, 1927, to obtain, in a definite and usable form, the opinion of those actually in the selling field, the president had sent to the managers of the company's 36 exchanges the questionnaire[2] shown in Exhibit 4. All copies of this questionnaire were returned and the results tabulated as shown in Exhibits 5 and 6. These results were before the president and the other executives at the meeting in March and, when tempered by the judgment of the men present and their general knowledge of the market, formed the basis upon which they planned the 1927–1928 production program.

Exhibit 6

Number of Exchanges in Favor of Producing Releases Listed and Percentage of Company's Entire Distribution Represented by these Exchanges

	No. of Exchanges*	Percentage of Total Distribution Represented by Exchanges
Newsreels—Kinograms	29	98.75
Comedies		
Mermaid Comedies	31	100
Christie Comedies	30	98.75
Juvenile Comedies	31	100
Bobby Vernon Comedies	30	98.75
Billy Dooley Comedies	25	82.15
Jimmy Adams Comedies	14	39.13
Tuxedo Comedies	26	85.17
Lupino Lane Comedies	30	97.75
Cameo Comedies	29	96.75
Lyman H. Howe's Hodge Podge	29	97.50
Miscellaneous		
Bruce Scenics	9	26.92
Felix the Cat	31	100
Curiosities	15	58.45
Life Cartoons	5	14.15

* All other exchanges voted "No."

The executives of Educational Pictures, Incorporated, in making their decision on the 1927–1928 production schedule, were influenced by their knowledge that the Paramount Famous Lasky Corporation and the Metro-Goldwyn-Mayer Pictures Corporation, which in the past had been producing only feature pictures, were planning to include in their 1927–1928 programs short comedies and regular issues of newsreels. It was not known

[2] See Universal Pictures Corporation, page 132.

at that time exactly what the 1927–1928 short picture program of these two companies would include, but it was believed that this new product would actively rival the pictures of Educational Pictures, Incorporated, in the independent theater field and would probably mean the entire elimination of Educational pictures from the theater chains controlled by these two corporations.

The Paramount Famous Lasky Corporation controlled, through its subsidiary, the Publix Theaters Corporation, about 300 motion picture theaters; and the Metro-Goldwyn-Mayer Pictures Corporation controlled a similar chain through its alliance with Loew's, Incorporated. Of the 13,000 accounts of Educational Pictures, Incorporated, about 1,000 were theaters of the larger and more important chains of motion picture theaters, and about 1,200 were theaters of smaller local chains. About 600 of its accounts were with theaters belonging to chains controlled by national producers of feature pictures who were also producing short pictures or who planned to do so during 1927–1928.

The Paramount Famous Lasky Corporation and the Metro-Goldwyn-Mayer Pictures Corporation had already taken steps to secure the services of certain producers of comedies, including some of the companies and individual producers who in the past had been under contract to Educational Pictures, Incorporated. The following comedies, previously released by Educational Pictures, Incorporated, were in the year 1927–1928 to be released by the Paramount Famous Lasky Corporation: Adams comedies; Christie comedies; Dooley comedies; and Vernon comedies. The Metro-Goldwyn-Mayer Pictures Corporation had secured the services of Hal Roach, who for several years had been directing and producing comedies released by Pathe Exchange, Incorporated.

Although only nine exchange managers, representing 26.92% of the total distribution of Educational Pictures, Incorporated, favored continuing the release of the scenic pictures produced by Mr. Bruce, the president and other officers of the company were of the opinion that the 1927–1928 program should contain some Bruce Scenics. Mr. Bruce had been with the company since its inception, and the officers felt an obligation to retain his services. They believed also that, although exhibitors and the public expressed little interest in scenic and geographic pictures, such pictures would contribute to the improvement of the standard of motion picture entertainment. It was planned to have Mr.

Bruce produce different types of scenics in 1927–1928 from those which he had produced in previous years.

Life Cartoons had received the favorable vote of so few of the exchange managers that it was thought best to drop the series. It had proven impossible for the company to pay the producer of these cartoons a high enough price for the productions to cover costs.

Although Curiosities had been favored by only slightly more than half the exchange managers, the executives of the company decided to continue releasing a series of Curiosities. The company had advertised and exploited these pictures and believed that with continued effort they might be brought into more widespread public favor.

In 1927 there was a paucity of girl comedy stars on the screen. The executives of the company, believing that short comedies featuring a well-trained comedienne would be sold profitably, contracted for the services of Dorothy Devore to act in short comedies. At about the same time they contracted with Charlie Bowers, a comedian adept with trick actions. The pictures produced by these two comedy stars were to take the place on the company's program of those series of pictures which had been dropped or lost to other companies.

Exhibit 7

Production Program of Educational Pictures, Incorporated, for 1927–1928

Newsreels—Kinograms	104
Comedies	
Cameo Comedies	26
Juvenile Comedies	8
Lloyd Hamilton Comedies—2-reel	8
Mermaid Comedies—2-reel	16
Lyman H. Howe's Hodge Podge—1-reel	12
Tuxedo Comedies—2-reel	6
Larry Semon Comedies—2-reel	8
Lupino Lane Comedies—2-reel	8
Charlie Bowers Comedies—2-reel	6
Dorothy Devore Comedies—2-reel	6
Miscellaneous	
Specials—2-reel (Hope Hampton)	2
Felix the Cat—1-reel	26
McCall Color Fashion News—2-reel	2
Bruce Scenics—1-reel	13
Curiosities—1-reel	12
	263

The program of short pictures decided upon by the president and other executive officers of Educational Pictures, Incorporated, for the year 1927–1928 is shown in Exhibit 7.

COMMENTARY: This case illustrates an attempt to provide a basis for the determination of the program to be produced for the following year. The general approach as outlined in this case is common to several companies. The attempt to get the judgment of exchange managers throughout the country was undoubtedly wise. Though the case does not state that exchange managers were asked for suggestions in addition to their "Yes" and "No" answers to questions, it is probable that such a request was made. Concerning the value of the judgment of exchange managers, it is possible that a favorable vote on a given group of pictures indicated that that group was comparatively easy to sell rather than that it yielded a substantial profit to Educational Pictures, Incorporated. The general conference referred to in the case is a practice not confined to this particular company. Such conferences are important because in the long run no mere collection of statistics can be substituted for the exercise of individual judgment. On the other hand, it is equally clear that the more actual tabulated information there is available the more accurate the judgment will be. In the present status of the motion picture industry, the necessity for this type of information is of greater importance than ever before. It should also be noted that the rapidly changing competitive conditions require that all past records should be evaluated in the light of the conditions existing at the time the records were made.

From this one naturally concludes that the information sought by Educational Pictures, Incorporated, would have been more valuable if it had contained, as supplementing the data herein given, information concerning the trend of the data for former years. This trend over a period of years is as important in the determination of a policy as the facts for any given year. There may have been, for instance, a definite substitution of vaudeville acts for short subjects. It would obviously be important to know both that such substitution was occurring and the rapidity with which the change was taking place. Another type of information which would have been very helpful would have been figures relative to the net income on various groups of pictures produced by this company.

For some types of pictures, box office receipts might serve as an excellent gauge to the success of a picture. With Educational Pictures, Incorporated, such figures would be of doubtful value since box office receipts were more largely affected by the feature pictures than by supporting pictures. For those distributors who own their own theaters, the casual or solicited comments of patrons might serve as one

valuable index. Here again, Educational Pictures, Incorporated, since it owned no theaters, was at a distinct disadvantage.

In spite of these facts, it would appear, judging entirely from the facts in this case, that the company had not made fullest use of information which should have been available and which would have been useful. It is entirely possible, however, that the type of information referred to in the case was supplemented by such information as is suggested herein.

November, 1929 H. T. L.

Associated Newsreels, Incorporated

COOPERATIVE ASSOCIATION—NEWSREELS

Business Organization—*Consolidation of Competing Companies to Reduce Production Costs.* Competition between the several companies producing newsreels in 1928 had reached the point of decreasing profits because of excessive duplication of efforts in the filming of important news events. One of the companies suggested that a consolidation of the newsreel services would enable the world news events to be covered more thoroughly and at a saving in film costs to each company. Lack of complete cooperation prevented the formation of an association of all the companies producing newsreels, but a tentative verbal agreement between four of these companies was reached.

(1929)

In 1929 six distributors of motion pictures were distributing newsreels. They were Educational Pictures, Incorporated; Fox Film Corporation; Metro-Goldwyn-Mayer Pictures Corporation; Paramount Famous Lasky Corporation; Pathe Exchange, Incorporated; and Universal Pictures Corporation. Of these six companies the Paramount Famous Lasky Corporation and the Metro-Goldwyn-Mayer Pictures Corporation had entered the newsreel field in 1927.

Competition between the several newsreel services was increasing in intensity and as a result production costs were mounting rapidly and the gross revenue was dropping. It was estimated that in 1925, when only four newsreels were being made, the cost of producing all four was about $75,000 per week and the total income about $115,000 per week, while in 1928, when six newsreels were being made, the cost of production was $125,000 per week and the total income about $110,000 per week. The president of Educational Pictures, Incorporated, proposed, as a means of reducing the competitive costs of gathering news pictures, that the six companies organize a joint newsreel service comparable to the Associated Press in the newspaper field.

Each of the six newsreel companies maintained a regular staff of about 100 camera men throughout the world to obtain pictures of news events. These men were paid regular salaries.

The salary and expenses of a news camera man varied from $50 to $200 per week. In each city in which a company maintained a camera man it either owned, or rented on occasion, motor cars or trucks for transportation of cameras, camera men, and film. Each company also received pictures from independent "free lance" camera men, who offered pictures they had taken, and were paid only for the pictures used. This payment might vary from as little as 50 cents per foot to over $100 per foot, depending upon the subject.

Every important event of which notice was received in advance was photographed by several camera men for each company. On Colonel Lindbergh's return to New York after his transatlantic flight, for instance, about 10 camera men were used by each company to photograph his reception and ride up Broadway. The covering of sudden occurrences, such as storms, fires, and disasters, was dependent more upon the watchfulness and the "news sense" of the camera men than upon their number. The regular and free lance camera men employed by each company covered completely all parts of the world. The race to have pictures of important events developed, edited and delivered to theaters was a cause of increasing expenses. During 1928 special airplanes had been used several times at great expense to rush films to New York.

Each newsreel company released two issues per week. Each company presented pictures of all events of national and international importance, but usually covered different minor events. In addition to the general news, some of the companies inserted in their newsreels pictures of local events of interest to a limited section of the United States. Each company made about 200 prints of each of its issues. An average newsreel was from 850 to 950 feet long and the average cost per foot for a print, including cost of raw material and printing process, was 1¾ cents per foot.

Each of the six companies sold its newsreels through its regular salesmen who sold also its other productions. The salesmen tried to sell the newsreel service to every theater in their zones. The service was sold usually as a unit of 104 issues which would occupy the exhibition time of a theater for a period of 52 weeks. Some theaters purchased more than one newsreel service and edited them, making up newsreel services of their own which

appeared on their screens under their own names. The names of the producers, however, appeared on each scene. Thus the Strand Theater in New York City used Kinogram Newsreels, released by Educational Pictures, Incorporated, Fox Newsreels, and Metro-Goldwyn-Mayer Newsreels, combining them into a composite film appearing on the screen as the Strand Newsreel. It was estimated that 85% of the motion picture theaters in the United States were potential users of newsreels. Most of the others were very small theaters. The price paid for the use of newsreel service varied from $1.50 per week for the smallest to $100 per week for the largest theaters.

The president of Educational Pictures, Incorporated, observing the mounting costs of competitive efforts, believed that the organization of an association for the production of newsreels would reduce the cost of production. He tentatively discussed the idea with his competitors. Three of them expressed an interest in the plan. They were the Fox Film Corporation, the Universal Pictures Corporation, and Pathe Exchange, Incorporated.

The other two companies, Paramount Famous Lasky Corporation and Metro-Goldwyn-Mayer Pictures Corporation, were not interested in the plan. One of their chief reasons for entering the newsreel field had been their desire to be in a position to furnish their customers with a complete program. This would not be prohibited under the joint newsreel service, but these companies had invested a large sum of money in the establishment of their newsreels and believed that they were in a strong competitive position. Each of them apparently expected to become a leader in the newsreel field despite the intense competition of the other companies.

After some negotiations the proposal took form in a tentative verbal agreement to form a company to be known as Associated Newsreels, Incorporated, with a capital of $50,000 which was to be held equally by the four parties to the agreement. A manager was to be selected to take charge of the operations of the associated company and an operating agreement entered into between the four member companies and the management of Associated Newsreels, Incorporated. The individual companies were to refrain from gathering their own news scenes and the associated company was to organize a news picture gathering service throughout the world.

The new company was to employ a regular staff of salaried camera men to cover the usual news events in most of the important places in the world, and was to buy films from the free lance camera men as the companies were doing at that time. All films photographed by the regular camera men on their assignments and all films accepted from free lance camera men were to be sent to New York, where the negative films would be developed. One print of each scene photographed would be prepared and sent to each of the four companies using the service. Each of these companies then could inspect the films and select from these films the scenes they wished to use. The desired number of prints of each scene then could be prepared at the laboratories of the associated company and shipped to the companies using them. This process of selection and editing would require no more time than was required under the then prevailing method. The companies would be at liberty to make up their own newsreels from these prints as they might see fit and to sell the newsreels through their own distributing organizations as they had been doing. Thus the costly competition in production would be eliminated, while each newsreel would retain its own identity.

According to the proposed plan, Associated Newsreels, Incorporated, would maintain a large enough staff of camera men to enable it to offer for selection a variety of pictures of important events. Free lance camera men probably would furnish enough scenic and unimportant news pictures to permit a wide selection of those subjects.

No arrangement had been perfected for the financing of the new company. It had been suggested, however, that each of the four companies pay to Associated Newsreels, Incorporated, a royalty for each foot of negative film prepared. In return for this payment the companies were to be entitled to receive one positive print of all films. The associated company also would make a certain charge per foot of positive film delivered over and above the original one print furnished under the royalty. With a regular semiweekly income from these sources, it was believed that the new company would not require a large initial investment of capital. It was the intention to charge a royalty and a footage charge on positive prints just sufficient to cover the cost of operating the new company. Any profits would be either left

in the company or shared equally as dividends on the stock held by the four promoting companies.

The president of Educational Pictures, Incorporated, who had originated this plan, believed that it would effect a marked reduction in the cost of newsreels in several ways. The number of camera men employed would be reduced greatly. Where formerly each company had assigned from 5 to 10 camera men to each important event, Associated Newsreels, Incorporated, would assign a force of 5 or 10 which would serve the needs of all 4 companies. It probably would be possible to cover the field more effectively with such a force. The expense of racing films to New York in an attempt to beat the other newsreel companies would be reduced, since only one airplane or other means of transportation would be used for the films of the 4 companies. It was believed that the total cost to each company of producing a negative film laid down in New York would be reduced 50%. Estimating that each of the 4 companies which planned to form Associated Newsreels, Incorporated, had been spending about $10,000 per week for their negative films, one of the men who favored the plan pointed out that if each of the companies contributed $5,000 per week to the new company, the latter would have twice the amount spent by each of the companies in the past at half the cost to the separate companies.

COMMENTARY: The development of newsreel service by an increasing number of large producer-distributors was doubtless the result of three factors: first, their desire to offer to their own theaters and other customers a complete program; second, as a corollary of the first, the recognition of the fact that newsreels are considered an essential part of every program; and third, a belief that newsreels are good advertising in themselves for the producer.

The proposal for the organization of a cooperative association for the production of newsreels had much in its favor. Provided that the newsreels were to be sold under the name of the cooperator and not under the name of Associated Newsreels, Incorporated, as such, the cooperator would probably accomplish every object that he would attain by developing his own news service. Cooperative production would, furthermore, result in a substantial reduction in costs for all concerned; and, finally, the news service could be of much better quality. The proposal was thoroughly justifiable and was worthy of success.

It might be contended that a single service such as was proposed, by eliminating all competition, would remove the incentive to maintain

the same quality of product that formerly existed. The existence of this danger is not to be doubted. Since the number of cooperators would be small, however, and since their own success would be dependent upon the character of the product, it is probable that the quality of the newsreels would be whatever the cooperators desired to make it. Should the service prove very unsatisfactory, it is safe to assume that withdrawals would result and competition would again develop. However, since the proposal never materialized, it is needless to discuss the argument further, especially as it probably had little if any weight in the decision.

One objection to be overcome by the promoters of the project outlined in the present case was that of personal prejudices on the part of those whose cooperation was necessary. As in all cooperative enterprises, whole-hearted cooperation and loyalty were essential. No truly cooperative organization can succeed without them. It appears that they did not exist in the present instance.

November, 1929 H. T. L.

Universal Pictures Corporation

PRODUCER AND DISTRIBUTOR—MOTION PICTURES

Merchandise Analysis—*Consumers' Opinion Sought through Advertising.* A producer and distributor of motion pictures desired to know what kind of pictures were most acceptable to the public. A series of magazine advertisements, in questionnaire form, presented the producer's problems to the public. The consolidated replies were of assistance in the modification of the company's production program.

(1928)

The Universal Pictures Corporation for a number of years had been one of the largest producers and distributors of motion pictures in the United States. Although all producers were faced each year with the problem of ascertaining the kind of pictures the public wanted to see on the screen, neither the Universal Pictures Corporation nor any other producer had found an entirely satisfactory means of doing so. In 1928, there seemed to be more than usual concern over this problem, partly because of the advent of talking pictures and of pictures synchronized with sound and musical effects. As an aid in meeting the problem the Universal Pictures Corporation sought an actual expression of opinion from theater goers.[1]

Two distinct problems faced the producers in their attempt to find out what type of pictures the public wanted to see. One problem was to ascertain the relative success of pictures already produced. The other, which was a more difficult problem to solve, was to determine the types of pictures that would be popular in the future. Several sources of information upon which to base a decision on each of these two problems were available to producers. They included reports of box office receipts on pictures already shown; the opinions of excutives connected with the producing and distributing departments of the industry; the opinions of exhibitors; criticisms of reviewers and other writers published in magazines and newspapers; and expressions received direct from the public in letters to stars and executives, and in conversation overheard by ushers and other theater

[1] See also Educational Pictures, Incorporated, page 115.

employees. The Universal Pictures Corporation, like most other producers, made use of all these sources of facts and opinions.

In obtaining an expression of opinion direct from the public the company was following the policy it had adopted a number of years before of presenting some of its problems to the public in the columns of the *Saturday Evening Post*. Since 1922 the company had maintained in each issue of that magazine a column of advertising matter over the signature of its president, Carl Laemmle. While the greatest benefit of this column to the company doubtless was obtained from the advertising it gave, the company also considered it to be of value as a means of securing the opinion of the public on many subjects. Exhibit 1 presents an example of the type of advertisements which appeared in this column.

From time to time the public had been questioned through the column about certain stars, directors, stories, and pictures; replies were solicited and additional questions invited. All replies were read and answered by a personal letter. An average of about 100 letters per day were received. In connection with the column the company had developed a mailing list of about 60,000 people interested in motion pictures. It frequently consulted groups of people selected from this list on questions of importance. Out of this list had been drawn a more or less permanent one of about 300 persons who had expressed especially intelligent interest. This group was consulted more frequently than any other.

In an effort to obtain a more complete expression of opinion from the public than it had in the past, the company prepared a list of questions which it inserted in its

Exhibit 1: Advertisement in *Saturday Evening Post*, October 20, 1928.

regular weekly column in the *Saturday Evening Post* of November 24, 1928. It requested all readers to write their answers and opinions in letters addressed to the president of the company.

This advertisement elicited a large number of replies and, on the whole, the replies were of a more intelligent nature than usual. Persons in all walks of life seemed to take an interest in the questions. A large number of men sent in their opinions: the final count showed the replies to be divided about equally between men and women. Altogether, approximately 350 replies were received. As in the past, the company answered all letters.

A general report of the answers to the questions was prepared for the president of the company. It is shown in Exhibit 2. This report was circulated among other executives as well and exerted considerable influence over their decisions when planning new pictures.

Exhibit 2

Report of Answers to Questions in Advertisement of Universal Pictures Corporation

1. *Do You Like Happy Endings?*
   The majority of fans favor the happy ending, but agree that, rather than force an ending, the sad one is preferable. *LOGIC is the element of prime importance according to these writers.*
2. *Do You Think When Filming a Great Play, Book or Classic of Some Famous Author, We Are Justified in Changing What May Be the Original Sad or Tragic Ending to a Happy Ending?*
   Most fans would rather have some well-known work transferred to the screen "as is," unhappy ending included. However, a sizable number feel that we are perfectly justified in changing the ending, if it in no way detracts from the story.
3. *Which Do You Like Best:*

Love Stories	Heart Throb Dramas
Tense Drama	Spectacular Productions
Thrill Pictures	Adventure Dramas
Comedies	Underworld Stories
Problem Plays	Western Pictures
Sex Stories	Society Dramas
Comedy Dramas	College Pictures
Historical Pictures	

   Here we meet great divergence of opinion, but Love Stories, Comedy Dramas, Thrill Pictures, College Pictures, Underworld Stories, and Society Dramas seem to head the list. The sum and substance of it all seems to be that any story *Well Made* will be well received.
4. *Do You Like "Teams" in Pictures—That is, Two Stars Linked Together Always Playing as a "Team"?*
   The fans like stars to "team" in two or three pictures, but get tired of seeing them play together continually. *This was very definite.*

EXHIBIT 2 (Continued)

5. *What Influences You Most To Go See a Motion Picture—The Author, Star, Director, Popularity of Story, Book or Stage Play?*
   The Star, Popularity of Story, Director, and Author influence the fans to see pictures, in the order named.
6. *Do You Go To See Pictures Because of the Title of the Picture?*
   Very few fans say they go to see a picture because of the drawing power of the title.
7. *Do You Prefer Youth and Beauty in Leading Roles Rather than Middle Age?*
   Youth and Beauty are favored by the majority of the fans, but a great many are loyal, *at least in writing*, to "old-timers."
8. *Have You Any Favorite Classic or Big Story You Would Like to See Screened?*
   The response to this question is listed separately. All new story suggestions are being covered by Scenario Department.
9. *Do You Ever Communicate With the Manager of Your Favorite Theater and Tell Him What Pictures You'd Like to See Screened?*
   The majority of the fans say "no"—though not a small number say "yes." Some say they have done so for the first time since receiving our letter suggesting this.
10. *Have You Ever Done So?*
    See Question 9.
11. *If You Were a Motion Picture Executive, What Kind of Stories Would You Buy?*
    Most of the fans decline to answer this question. The ones that do vaguely suggest "all kinds," "what the public wants," "true-to-life stories," etc.
12. *Would You Cater to Any Particular Class of People?*
    The fans are practically unanimous in agreeing they wouldn't cater to any particular class of people.
13. *Have You Seen and Heard Any Talking Pictures?*
    Two-thirds have seen and heard them.
14. *If So, How Did They Impress You? Did You Like Them? What is Your Criticism?*
    The fans that have seen talkies hesitate to judge from the few that have appeared, feeling that there is immense room for improvement. However, the response to talkies here is somewhat negative—unenthusiastic.
15. *Which Male Stars Do You Like the Best in the Movies?*
    Gary Cooper, Charles Rogers, Richard Dix, Hoot Gibson, Charles Farrell, John Gilbert, Reginal Denny, Ramon Navarro, Glenn Tryon, and Ronald Colman are the favorites with the fans.
16. *Which Female Stars Do You Like Best in the Movies?*
    Dolores Del Rio, Laura La Plante, Clara Bow, Joan Crawford, Billie Dove, Mary Philbin, Renee Adoree, Dolores Costello, Bebe Daniels, and Marion Nixon head the lists of favorite female stars.
17. *Do You Think The Public Is Interested in Pictures Dealing with Prize Fights?*
    More votes against than for. *Yet it is admitted that freshness of story treatment might alter opinion.*
18. *If You Saw a Good Picture That Had No Outstanding Stars in it Would That Satisfy You as Well as a Mediocre Picture with Prominent Stars Heading the Cast?*
    The almost unanimous answer to this question is "yes."
19. *Do You Remember Who Directs a Picture after You Have Seen It?*
    If picture has special merit, director's name seems to be remembered.
20. *When You See a Good Picture, Do You Always Remember the Title?*
    The "ayes" have it, in this reponse.
21. *Do You Like Pictures That Have Lavish Settings, Costumes, Fashions, etc., or Do You Prefer a Simple Story, Well Told?*
    "A simple story well told" seems to be the favorite, but a great many like both.
22. *Do You Like the Lavish Stage Presentations That Precede Many Big Pictures, or Would You Like to See Them Dispensed With?*
    Big town fans seem to like the stage presentations, if they are well done. Small town fans don't see them.

EXHIBIT 2 (Continued)

23. *Do You Object to New Stars in Prominent Parts in Big Pictures, and Would You Prefer the Older and Better Known Stars to Be Cast in Those Leading Roles?*
The fans seem to think it all depends on the story. See also answer to Question 7.
24. *Would You Object to Seeing a Big Picture in Two Parts—One Part on Each of Two Different Evenings?*
To see a picture all at one showing is the preference of the majority of fans. Many give as their reason the too great expense for just one picture, if they have to pay the same price for two evenings.
25. *Do You Like Serial Pictures That Are Well Made?*
The letters do not represent a group of people with whom the serial is a popular source of entertainment.
26. *Do You Read the Fan Magazines?*
Most fans read the fan magazines.
27. *If So, Which Do You Prefer?*
Photoplay seems to lead. *Screenland* next.
28. *How Much Faith Do You Place in the Reviews of Pictures by Magazine and Newspaper Critics?*
Most fans enjoy reading criticisms, etc., but are rather dubious about placing their faith in them. Like to see for themselves, especially when a favorite player is being presented.

COMMENTARY: The present case furnishes an example of an attempt on the part of a producer-distributor to determine by means of a questionnaire the type of pictures the public desires. This problem, as suggested elsewhere, is extremely difficult. The problem is similar, in some respects, to that confronting publishers of books and producers of style goods generally. The producer of pictures is interested in knowing what type of pictures will sell to the public. Moreover, this must be known months in advance of production, since the selection of the scenario and the cast and the actual making of the picture take considerable time. An error may be extremely costly. Yet up to the present time no producer has been able to find a method by which he could be assured, in advance of production, that any given picture would prove a box office success. On the other hand, any method that would provide a basis for more accurately forecasting the value of a production would be distinctly worth while, even though by itself it did not entirely solve the problem. As to the particular method adopted by the Universal Pictures Corporation, too much should not have been expected of it. The public cannot be depended upon to interpret specifically its desires. In this case, furthermore, but a very small number of returns were received, too small to be of any particular value. There is also a question as to whether or not those that were received were typical of the average theater patron. We would be inclined to venture the guess that they were not.

A further issue arises as to whether the particular form of advertising suggested in this problem might not be of worth even though the ostensible purpose indicated was not accomplished. In the sale of

motion pictures, as in that of other products, direct consumer advertising is a desirable thing. Furthermore, the personal character of the appeal in this case was especially noteworthy. The case indicates that about 100 letters a day were received in response to the advertisements in the *Saturday Evening Post.* A very substantial mailing list had been built up in consequence. From this mailing list, selective groups of persons were chosen and frequently consulted. All of these facts suggest that it would have been distinctly unwise for the company to discontinue direct consumer appeals, even though they did not serve as an adequate basis for forming a judgment on the particular question in mind.

November, 1929 H. T. L.

Universal Pictures Corporation

PRODUCER AND DISTRIBUTOR—MOTION PICTURES

Merchandise Selection—*Sound Picture Development Coordinated with Silent Pictures.* A company producing motion pictures was faced in 1929 with the problem of determining in advance of adequate information the relative emphasis to be placed upon the silent and sound versions of future productions. A study was made of the market and its ability to use sound pictures together with an analysis of the public interest in sound pictures. The company decided to secure literary material which was primarily adapted to silent pictures but which provided an opportunity to introduce sound and dialogue.

(1928)

In determining its output for the theatrical year 1929–1930, the Universal Pictures Corporation faced many problems arising from the recent introduction of sound pictures. The theatrical year 1929–1930 would extend from September 1, 1929, to August 31, 1930. The selling season would open about June 15, 1929. A yearly production program was tentatively planned a year in advance by a committee consisting of the president, the sales manager, the production manager, and the advertising manager. It was necessary to decide upon the relative emphasis to be placed upon the silent and sound versions of the forthcoming productions, in order to purchase literary material effectively.

The Universal Pictures Corporation, a large producer and distributor of motion pictures, with studios in Universal City, California, and distributing offices in New York City, was one of the oldest and largest companies in the industry. It had been established in 1912. In 1925, a subsidiary, the Universal Chain Theaters Corporation, was organized to own, lease, and operate a chain of 270 motion picture theaters. Most of these theaters were located in towns of from 5,000 to 50,000 population in different sections of the United States. The remaining theaters were first-run houses operated in large cities to exploit the release of the films in a particular territory. The Colony Theater at 53rd Street and Broadway was in the latter class.

The company was producing and distributing all types of films, including features, newsreels, short comedies, and short subjects.

The films were distributed through an organization under the direction of a general sales manager in New York City. This organization included 40 exchange offices throughout the United States and Canada, each of which served a definite sales territory. The company also sold its films in the foreign market through 26 exchange offices located in the larger foreign cities; approximately one-third of the total volume of sales was in the foreign market. The company sold to all classes of exhibitors, including those who operated large metropolitan theaters, theaters of medium size, and small rural theaters. It sold to independent exhibitors as well as to those who operated large chains. Since it released a large number of films of all types, its product was well suited for distribution to all theaters. It sold its films to many of the small exhibitors in the United States under the Universal Complete Service Plan. Under this plan, for a specified weekly rental, generally for a period of 52 consecutive weeks, the Universal Pictures Corporation supplied an exhibitor with a series of complete programs, including in each a feature film and a comedy or such short subject as he might need. Most of the contracts provided for a change of program once a week, although some provided for a change at more frequent intervals. The exhibitor was given the choice of all Universal productions except newsreels and a few pictures of exceptional quality. A great deal of attention was given to advertising and the company had for a number of years taken a column each week in the *Saturday Evening Post.* Through this column, the company established goodwill and a contact with the public by which many suggestions were obtained.

Of the 20,000 theaters in the United States, it was estimated that 14,000 constituted the potential market for Universal films. Some theaters were so situated in competition with other theaters that it was impossible to sell to both groups. It was further estimated that approximately 1,400 of the 14,000 theaters were wired for synchronized sound reproduction; these 1,400 theaters included nearly all the larger theaters in the key cities. Many of the theaters operated by the Universal Chain Theaters Corporation were being wired. The theaters with nonsynchronous reproducing systems were estimated, in December, 1928, to be approximately 2,000 in number.[1] The number of theaters with

[1] No reliable data were available. The above estimate was the consensus of opinions obtained from three editors of trade publications.

sound reproducing systems was increasing in December, 1928, at the rate of approximately 150 per month, with orders for installations for six months in advance.

The opinions of leaders in the industry and of the public varied as to the future of sound pictures. Sound films were proving highly successful in the larger cities, and the Broadway theaters were making new records in weekly attendance. Scores of screen executives thought that within a few years sound pictures would be the sole medium of dramatic entertainment. Others looked upon the development as a novelty that would soon lose its appeal to the public. It was commonly held, however, that the addition of musical accompaniment had improved the silent picture.

Large producers had adopted differing policies in the production of sound pictures. One large producing company was devoting its attention almost entirely to the production of dialogue pictures, in many cases making no endeavor to distribute to unwired theaters. Stage celebrities replaced screen stars in many such productions. Other large producing companies were releasing films produced primarily for their value as sound pictures and secondarily for silent entertainment. Screen stars were being cast in dialogue or singing roles which in some instances occupied the major part of the screen time of the picture.

The Universal Pictures Corporation had an arrangement with the manufacturer of Movietone sound recording equipment. During the 1928–1929 season, the company had scheduled 450 films for release, of which 63 were feature pictures. Four pictures with dialogue and sound effects had been released in November and December, 1928, and it was planned to release others during the latter part of the theatrical year. The sound pictures had been well received in the theaters wired for sound. The company believed, however, that a picture produced as a sound picture and shown as a silent picture was inferior to that same picture originally produced as a silent product. The company was considering the simultaneous showing of two versions of a forthcoming release in adjacent theaters in New York City as a test of the general popularity of sound versus silent pictures.

One consequence of the development of sound and talking pictures had been an extension of the length of run for a picture in a theater. This was particularly true of the larger theaters, where it was not uncommon to hold for two to five weeks a sound

or talking picture that would have been shown for only one week as a silent picture. Many managers of the smaller theaters were substituting a weekly change of program for the split-week program in effect before a sound reproducing system was installed.

The company had found that its stars and acting personnel were competent to produce talking pictures. The predicted difficulty in the use of motion picture stars in talking pictures had failed to materialize. Title writers also had been found competent in the writing of dialogue; thus, in many cases, the employment of playwrights had proved unnecessary.

The problem of making talking pictures for the foreign market had remained unsolved by any producer. It had been found impossible to record dialogue in more than one language without considerable expense and sacrifice of quality. Few theaters outside the United States and Canada were wired for sound reproduction, and although the larger manufacturers of sound equipment had established foreign sales branches, it would probably be some time before the foreign market was ready for sound pictures.

It was proposed by an official in the company that the major emphasis in the production of Universal features be placed on the silent picture. While the company had made no analysis of film rentals, classified as to wired theaters, it was known that the total rentals from unwired theaters in the United States and Canada and abroad in December, 1928, exceeded the total rentals from wired theaters. The pictures produced by the Universal Pictures Corporation were adaptable to the smaller as well as to the larger theaters. It was pointed out that a failure to supply high-quality feature pictures for these smaller unwired theaters would injure the sale of pictures under the complete service plan. It was further stated that inasmuch as some of the larger producers were specializing in sound productions, an opportunity existed for the Universal Pictures Corporation to take over additional business in the silent theater market.

The executives did not believe, however, that the sound pictures should be ignored. The large city theaters, upon which the company depended for the exploitation of its films, would not be interested in good silent or poor sound pictures; that part of the market demanded high-quality sound pictures. Furthermore, the wired theaters constituted an important source of rental

revenue, particularly because of the fact that they were mostly first-run theaters with larger rentals per picture. The rental for a first-run showing averaged approximately five times the rental for a second-run showing.

The company realized that difficulty would be experienced in procuring literary material which was adaptable for the combined silent and sound production. It also realized that a feature picture of high quality in both sound and silent versions would prove more expensive than in either version alone. The production department was thought competent, however, to produce a number of feature pictures of the desired quality. It was decided, therefore, to endeavor to secure, in so far as possible, literary material primarily adapted to silent pictures but which provided an opportunity to introduce sound and dialogue.

In accordance with this policy, the company decided to purchase rights to reproduction of dialogue, songs, and music from the dramatic successes, "Show Boat" and Broadway." The motion picture rights to these stories had been purchased in 1928 at a cost considerably in excess of that of the average story material. The additional expenditure for material was believed to be justified by this material's suitability for combined silent and sound pictures and by the exploitation already received by these dramatic productions, which had been shown for a considerable time in Broadway theaters.

Commentary: This case presents a problem on which a decision was necessary before all the theoretically desirable facts were known. The issue, in short, is whether or not a producer with a large established business is justified in committing himself more or less entirely to a frankly experimental product, especially prior to a time when that product is technically perfect.

There are various arguments as to why such a policy might have been adopted in the present instance. The production of sound pictures made it possible to capitalize largely on the novelty demand for sound. It might be hoped, moreover, that by the time the novelty feature had worn off, technical improvements would have been made of sufficient worth to overcome the inadequacy of the earlier product. Again, of the theaters that were wired for sound pictures the greater percentage were the larger theaters. These theaters were naturally the first-run houses in key centers, and returned to the distributor by far the largest percentage of his total return on any picture. In

the present case a further determining factor was the fact that other producers were selling sound pictures in substantial numbers.

On the other hand, there were many reasons why the company should not commit itself unreservedly at this stage of the development to a program of sound pictures. A test campaign to determine public sentiment was impossible. This company might, therefore, have allowed others to experiment, profiting itself by their experience. Furthermore, a heavy initial investment would be required. It might be argued that to offer unsatisfactory sound pictures might permanently prejudice the patrons against them. It was not easy to adapt scenarios, casts, etc., that had been assembled for silent pictures to the sound product. It should have been remembered too that sound pictures could not be shown in an unwired house and a large number of the theaters were not wired. Universal Pictures Corporation owned some motion picture theaters, most of which were small. It exhibited its pictures in these as well as in many other small theaters. The latter would naturally be wired last of all. A final argument might be that the foreign market was not ready for sound, and consequently the export of Universal pictures would be substantially reduced.

From many points of view it would have been much wiser, therefore, not only for Universal Pictures Corporation but for motion picture companies generally to have entered upon the production of sound pictures far more cautiously than they did. How far their decision was influenced by a desire to get the industry out of the rut in which it was conceded to be in 1927–1928; how far motion picture executives yielded to the high-class selling pressure of electrical companies having equipment for sale; and how far they were "carried off their feet" by the fear that competitors would capitalize unduly upon their early sound experiments is not an issue that can be settled. It is doubtless true, however, that although technicians had been developing sound apparatus for some time, the motion picture industry was in no way prepared for its sudden advent.

In the present case, with practically every other producer committed to sound, Universal Pictures Corporation probably had no alternative but to follow a similar policy.

November, 1929 H. T. L.

RKO Productions, Incorporated

PRODUCER—MOTION PICTURES

Merchandise Adaptation—*Motion Pictures Supplied with Both Disc and Film Methods of Sound Reproduction.* Previous to 1929 a company producing motion pictures had recorded its sound pictures by the sound-on-film method only, rather than by sound on disc. Although it was to the interest of the group of companies to which this producer belonged to encourage the sale of sound-on-film equipment and although disc recording would increase the company's production and distribution costs, the company decided to supply discs as well as sound on film for the reproduction of its 1929–1930 product, since the trend of the industry was toward supplying both mediums.

(1929)

In planning its program for the 1929–1930 season, RKO Productions, Incorporated, found it necessary to determine its policy relative to supplying discs for the reproduction of sound pictures. During the previous season, the company had recorded its sound pictures by the sound-on-film method exclusively. In April, 1929, the vice president in charge of distribution believed that market developments necessitated a careful reconsideration of the existing practice.

RKO Productions, Incorporated, was incorporated late in 1928 as a subsidiary of the Radio Corporation of America to take over the assets and business of FBO Productions, Incorporated, and its distributing subsidiaries, which included FBO Pictures Corporation, FBO Pictures Corporation of Canada, Ltd., and FBO Export Corporation. These subsidiaries later became RKO Distributing Corporation, RKO Distributing Corporation of Canada, Ltd., and RKO Export Corporation, subsidiaries of RKO Productions, Incorporated. The latter company was one of the largest companies in the industry, producing and distributing all types of pictures, except newsreels, including specials, features, "westerns," comedies, and short subjects. Branch exchanges were maintained in 34 cities of the United States and Canada, and in the larger cities in foreign countries, with approximately $11,000,000 in sales in 1928.

During the 1928–1929 season, 53 feature pictures had been released by the company, of which 8 were produced with sound; all the 1928–1929 product had been released with silent versions. The company had tentatively planned in 1929 to produce 30 feature pictures with sound; of these 30 pictures, 15 were to have silent versions as well as sound versions. It was the intention of the company to produce pictures of a different type from, and of a higher quality than, those formerly made by FBO Productions, Incorporated.

In determining what to produce for the coming season, the executives of RKO Productions, Incorporated, had been of the opinion that sound pictures had developed beyond the status of novelty entertainment and were to take an important position in motion picture entertainment. This attitude was shared by other large motion picture producers. The relative emphasis given to sound effects, dialogue, and synchronized music would vary with the requirements of a particular picture. Certain story material already selected for the production of RKO pictures would require considerable dialogue and song reproduction.

FBO Productions, Incorporated, had been licensed in 1928 to record sound on film by the system of RCA Photophone, Incorporated. The latter company had been formed in 1928 for the purpose of distributing a recording and reproducing equipment, known as the Photophone System, a sound-on-film device. It was to the interest of the Radio Corporation of America to encourage the sale of sound-on-film equipment. While the Photophone System included equipment for the reproduction of sound from discs, the superiority of the system rested entirely in the excellence of its recording and reproducing of sound on film. The system was rated by many expert authorities as the best in the market. RCA Photophone, Incorporated, had recently announced a lower price reproducing device designed for theaters seating 750 persons or less; the new device included both film and disc equipment.

RKO Productions, Incorporated, was interested, as were other large motion picture producers, in discouraging the installation of the cheaper reproducing equipment in theaters. Cheap equipment installations, largely limited to disc reproduction, might secure a hold on the theatrical trade which would later result in shutting out sound-on-film bookings. It was also recognized that the cheaper installations provided low quality

sound picture entertainment which might bring serious injury to the development of all sound pictures. Nevertheless, while the company was convinced that sound on film would be the better system in the future and desired to protect its development in so far as consistent with various interests, it believed that many of the disc reproducing systems gave a reasonably high quality of reproduction, and that healthy competition between the two systems might be useful in the development of the sound picture as a successful product. It was the opinion of some executives in the industry, however, that the various interests should get together and decide upon one system for all. Otherwise, increased overhead in production, increased overhead in distribution, and a general working at cross purposes would result in irreparable damage to the progress of the industry.

Apparatus for the simultaneous synchronization of sound and motion pictures was of two types: sound on film, and sound on disc. The disc type was a duplication of the phonograph on a large scale. The moving picture machine was coupled to the disc turntable and run by the same motor. There was a starting point on the film and a starting point on the disc. The two had to start at the same time from these given points. In synchronizing a phonograph record with a motion picture projector or camera, various mechanisms were used. In some instances, the machine was geared or otherwise mechanically connected to the phonograph, while in other apparatus the projection machine was driven from the phonograph or from a common driving force through electrical connections, and timed either by various types of synchronized motors or by electrical escapements. In still other apparatus the phonograph and the projection machine were driven independently of each other and mechanisms were provided for indicating their relative speeds so that the operator might bring them into synchronism.

The film method had the sound imprinted on the film itself in the form of a sound track of about one-eighth inch in width, running along the side of the film between the sprocket holes and pictures. The sound was not recorded on the same spot as was the action, for the reason that, on account of mechanical requirements, the sound aperture was 20 frames ahead of the moving picture aperture through which the motion picture was projected on the screen.

There were two methods of recording and reproducing sound on film, the variable density and the variable width. The variable density system was used by the Western Electric Company, and the variable width by RCA Photophone, Incorporated. The Western Electric system, known as the Movietone, or variable density sound track, consisted of different density lines running across the entire width of the sound track on the film. The density of the lines was the result of the strength and quality of the sound. If the sound was soft, the lines were light; but if the sound was strong and had great volume, the lines were dark. The Photophone, or variable width sound track, was black on one side and transparent on the other. The division line resembled somewhat a saw with teeth of different lengths, or a miniature mountain range. The division line was always irregular and its shape depended on the volume of sound.

In the sound-on-film method, sound was photographed on a separate film on which the sound track was recorded. This film and the motion picture film were later combined in the printing process as one positive film. In order that the sound might be synchronized with the picture, marks were made on both the sound and scene films at the time the "shot" was taken, and these marks were matched in the printing. The recording of sound on film was performed by means of a varying light beam which was permitted to fall across a width of film equal to that of the sound track. As the film passed through the recorder, this light beam was set into vibration by a system brought about by an electric current which was in turn carried by sound striking a microphone.

Photophone projection was generally similar to ordinary motion picture projection except that it had added to it a "sound-head" which enabled a light beam to be thrown on the sound track on the film. The light getting through the sound track on the film then fell on the sensitive photo-electric cell which produced electric current and changed the variations in the original sound. A group of amplifiers in the projection booth increased the strength of this current, which was then transmitted by wire to the loud speaker. The speakers were mounted on either side of the motion picture screen.

One point on which the RCA Photophone system differed from other systems of sound reproduction lay in the use of the

fan beam method of sound distribution. In the Photophone system a series of moving coil cone loudspeakers were mounted on either side of the motion picture screen, but the angle of sound projection was made different in the case of each unit. This obviated any tendency toward directional distribution of sound and thereby created the illusion of the voice as coming from the speaker's lips.

The opinions of executives in the industry, as quoted in trade papers, varied considerably with respect to the advantages and disadvantages of each method. The following is a symposium of such opinions taken from the *Film Daily* of March 1, 1929, et seq.:

The sound on film method was stated to have several advantages in the production of sound pictures. It was claimed that recording on the film assured an accuracy in synchronization of sound to action and a protection against the possibility of dialogue or sound failing to follow the scenes of a picture, and that "long shots" or "close-ups" retained the same even tone and a high degree of modulation. This condition was believed by some producers to have resulted from a further developed technique in the film recording process than was possible with the disc recording process.

The film method was held to be more elastic in production. A great variety of locations could be filmed; the use of portable outfits allowed greater mobility in the art, and freer action in the pictures. A metallic disc was in process of development, however, which would not be subject to changes of temperature like the wax disc, thereby removing the limitation of disc recording to studio work. It was stated that with sound on film recording, it was possible to do everything required in silent pictures from a "lap-dissolve" to intricate double and triple exposures without losing the sound. It was believed that the sound on film method would open new fields and provide greater possibilities to producers.

Simplicity and convenience were other advantages claimed for the film method. Film was more simple and convenient to handle than wax discs. The entire "rendition" was concentrated in one medium rather than in several bulky packages; as a consequence, less handling expense was incurred. These advantages were particularly noticeable in the cutting and editing work. The cutter was not confronted with the awkward task of changing

between two different media, the film and the disc. The assembly of pictures for release prints was more rapidly accomplished by the film method. The finished work might also be more readily inspected.

The disc method of recording was not so new and technically mysterious as the film method; disc recording had been practiced in the production of phonograph records for a number of years. The operation was standardized. It was claimed that the method was superior because the sound on film method lessened the photographic quality of the picture. In printing sound-film, there had been as yet no adequate system for combining the sound negative with the picture negative, principally for two reasons. One was that the scene negative had to be printed through the clear or unexposed part of the sound negative, as both passed before the window of the printing machine. This unexposed film, although transparent to the eye, formed a sort of veil over the scene print. The second reason was that the sound negative had to be printed continuously, causing blurring. With disc recording, no compromise whereby sound would be sacrificed in order to obtain a good pictorial result, was necessary in the development of the film. It was stated that the disc method was better when greater precision in recording was required. An important advantage possessed by the disc was that it afforded an immediate playback of scenes recorded; the director was able to know that the sound was going through the system and being recorded for permanent use in the picture.

Research workers stated[1] that the real problems of sound on film lay in the field of photography. The colloid, or gelatin, which formed the base of the film emulsion, held in suspension numberless molecules of silver salts. Unless these molecules were completely oxidized by exposure to light, they tended to fade. This fading process might take place immediately or later. On the other hand, if they were overexposed they underwent other changes equally disastrous. In the one case, the fading resulted in diminishing the sound recording to the vanishing point, while in the other case, distortion resulted.

In the distribution of sound pictures the sound-on-film print was less bulky, less fragile, and more convenient to handle than discs. There was less shipping expense and there were fewer

[1] *Film Daily*, March 17, 1929.

possibilities of error in shipping routine. The use of discs entailed storage problems. A counter advantage was claimed for the disc method, however, to the effect that proper distribution of sound film prints required the shipment of two prints and that the extra print had a carrying charge in excess of that for 20 wax records. The life of the sound track on a film was not very long, and a new print represented an expense of from \$20 to \$30. The cost of replacing a record was slight. Another consideration which was important to the distributor was the problem of censorship. When a sound film was censored, objectionable scenes were eliminated without great difficulty; with the disc, the removal of certain scenes from the print necessitated complicated arrangements for eliminating the sound which had never been satisfactorily solved from the standpoint of exhibition. Censorship was a local matter and constituted a troublesome problem, as a censored print might not be used outside the local territory.

The quality of reproduction obtained by the two methods was largely a matter of opinion. It was claimed that the tonal quality of the sound on film was more natural, more human, and more appealing. On the other hand, the adherents to the disc system contended that records gave more satisfactory sound quality in all reproduction. The screening value of film was affected by dirt, grit, or other foreign matter; the reproduction quality of a disc was affected by scratches and similar injuries to the face of the disc. It was claimed by a producing director than an audience was more inclined to look for flaws in reproduction—and consequently fail to follow the development of the photoplay—when listening to disc reproduction, because it was forewarned that a dialogue sequence was coming by a lowering of a score and a scratching of the needle on the record.

In the projection room operators claimed much less difficulty was encountered in operating the disc system; with sound on film the operator was compelled to take care of a number of important adjustments such as the operation of two amplifiers and an electric photocell. A disadvantage of discs in projection was the fact that not over 1,000 feet of film could be synchronized by a disc, making a change necessary every 10 minutes. Also, in the event that a film buckled or broke above the aperture plate, or the needle jumped from one groove to another on the disc, the reel was completely out of synchronism with no chance

of rethreading even though the break occurred in the middle of the reel. In such a case, it would then be necessary either to omit the balance of the film on that reel or take the film off, patch it, rethread it, and start from the beginning, which was very undesirable from the standpoint of showmanship. With the sound-on-film system, the film could be immediately rethreaded with the sound in synchronism no matter where the break occurred in the film. This advantage claimed for the film system was stated by a manufacturer of disc equipment to be "rather theoretical and academic in practice" inasmuch as "the number of film breaks occurring is an entirely negligible factor." A prominent exhibitor stated that the question of superiority of one system over the other depended entirely upon the care taken by distributors of sound film prints in the supplying of new prints. It was impractical at the present time, in his opinion, for exchanges to furnish each account with a print in absolutely perfect condition, and as a result distortion of sound had been caused by natural wear and tear. When exchanges were in a position to furnish good prints, the sound-on-film system would demonstrate its superiority.

In supplying discs for sound reproduction, RKO Productions, Incorporated, would be faced by several problems. The RKO studios in California were equipped to record only sound on film. It would be possible, however, in the production of discs to re-record at sound studios in New York. A sound on film recording would be projected and the reproduction utilized for the disc recording. This method was disadvantageous in that all tonal defects present in the sound-on-film reproduction would be recorded on the disc. RKO pictures, in competition with those recorded directly upon discs, might suffer in comparison. In view of the recent decision of the company to produce pictures of a higher class, the protection of quality was particularly desirable.

Supplying a sound-on-disc picture entailed the additional costs of re-recording, and disc preparation. Discs could be obtained either single-faced or double-faced. The single-faced disc was less susceptible to injury in shipping and handling; the double-faced was more economical in shipping and storing. Disc reproduction required a different film print from those used for silent or sound-on-film projection. It would be necessary to

match and mark each print very carefully in order that each might be of similar length and in perfect synchronism.

Distribution costs would be increased by the addition of discs for reproduction. Additional personnel would be necessary in the main office and at each exchange. The personnel would require training and instruction in the handling of discs, as carelessness would result in defective reproduction of the sound pictures in exhibition. Increased salaries would be required, in view of the additional work of the bookers and others in handling three sets of film, the silent, the sound-on-film, and the disc prints.

Constant attention would be necessary to maintain the quality of the disc reproduction for exhibition. It was estimated that a disc would be able to serve 20 "play-throughs." It was rumored, however, that the companies in favor of disc reproduction were instructing exhibitors to demolish the discs after a booking had been completed. This practice, if in effect, would serve to set a high standard in quality of sound reproduction, and would entail greater costs of disc production and exhibition.

A reorganization of physical handling in distribution would be advisable, as it would be impractical to supply discs from each of the 34 exchange branches. To meet this situation, the company planned, in the event that discs were added, to establish 9 or 10 disc distributing points among the more advantageously located exchange centers. Another company had started to distribute from a smaller number of exchange points, but had recently announced its intention of maintaining discs at every exchange. The problem of disc storage was troublesome, as each disc weighed 2 pounds and was 16 inches in diameter.

A survey of the market was made by RKO Productions, Incorporated, in order to determine the number of wired theaters. Little accurate information was available. Of the estimated total of 20,000 theaters in the United States and Canada, approximately 2,000 were estimated to be wired with systems equipped for both film and disc reproduction. The Western Electric Company reported nearly 1,600 installations. The number of theaters with disc reproducing equipment was unknown; a survey by the Motion Picture Producers and Distributors of America to determine this number was in progress. An incomplete list compiled from branch exchange reports showed about 900 disc-only installations. Estimates from other sources indicated,

however, that there were in the vicinity of 1,500 theaters with disc-only equipment of one sort or another. Various estimates placed the number of nonsynchronous installations between 2,000 and 3,000.

The theaters wired with dual systems, to reproduce sound from both film and disc, were largely those equipped with Western Electric and RCA Photophone systems. A few of the more widely recognized systems other than the Western Electric and RCA Photophone, such as the Bristolphone, Cinephone, Biophone, Pacent, etc., had announced supplementary sound on film reproducing equipment for the future, but for a number of months had been installing only the disc reproducing equipment. Exhibit 1 lists a number of sound reproducing systems. The possibility of manufacturing sound-on-film reproducing equipment without infringements of patents held by the two larger companies was questioned by the executives of RKO Productions, Incorporated. Action had been brought by the Western Electric Company against the Pacent Reproducer Corporation on April 2, 1929. The president of Electrical Research Products, Incorporated, the distributing subsidiary of sound equipment of the Western Electric Company, was reported to have stated that he was convinced that the system of disc reproduction used by the Pacent Reproducer Corporation was infringing upon no less than eight of the fundamental and important patents. An injunction and accounting of damages and profits were asked.[2]

The larger theaters in the key cities were for the most part wired with one or the other dual system, as were also the theater units in many distributor-controlled chains. The wired houses were estimated to represent approximately 75% of the revenue market for the company's pictures. The general sales manager stated that from 75% to 85% of the distribution was secured from about 1,200 accounts. Many small chains and circuits, however, were wired with only disc instruments. It was also probable that many theaters had installed cheaper disc equipment as a temporary measure in order to capitalize upon the novel popularity of the sound pictures without too great a financial commitment, or in order to secure an earlier delivery than was possible from Electrical Research Products, Incorporated, or RCA Photophone, Incorporated. These theaters might eventually install sound-on-

[2] *Motion Picture News*, April 6, 1929, p. 1027.

Exhibit 1
Listing of Sound Reproducing Equipment*

System	Film or Disc Reproducer	Price†	Leased or Sold	Service Charges	Delivery
		Synchronous Systems‡			
Phonofilm	Dual	$ 5,000 (Film only)	Leased—10 yrs.	Extra	30 da.
Cinephone	"	6,000 & up (Dual) 5,000 & up (Film only)	"	"	30–40 da.
Photophone	"	10,500–15,500 (Dual) 8,500–13,500 (Film only)	"	Fixed charge per month	20–30 da.
Traveltone	"	2,950 plus $5 royalty per week to Nakken patent	Sold	Extra	After Apr. 15
Vitaphone-Movietone	Dual	$ 7,000–19,500 (Dual) 5,500–17,000 (Single System)	Leased—10 yrs.	Fixed charge per month	60–90 da.
Biophone	Disc	2,750–4,500	Sold	Extra	Immediate
Bristolphone	"§	4,500	Leased—10 yrs.	"	10 da.
Chrest	"§	1,500	Sold	"	Immediate
Cincrow	"	2,100	"	"	10 da.
Film-O-Fone	"	1,750–2,100	"	"	30 da.
Foto-Voice	"	990	"	By owner	Immediate
Gennett	"	1,750–3,500	"	Extra	15–30 da.
Good-All	"§	1,000–1,800	"		
Master	"	2,000–2,500	"	Extra	20 da.
Movie-Phone	"§	1,000–12,000	"	"	Immediate
Pacent	"§	2,500–3,500	"	"	15–30 da.
Phototone	"§	1,500–1,800	"	"	15–20 da.
Qualitone	"§	2,500	"	"	Immediate
Reeltone	"	1,140–1,750	Leased—1 yr.	"	30 da.
Royal Amplitone	"	1,750–2,000	Leased	"	
Tone-O-Graph	"	2,500–3,500	Sold	"	
Vitatone	"	1,500	"	"	15 da.
Vox-O-Phone	"	2,500–3,000	"	"	Immediate

* This listing includes only those systems upon which information was available on April 1, 1929. Other synchronous systems announced for delivery included Dulcetone, Talk-O-Phone, Phonoscope, Masterphone, Cinemaphone, Hanophone, Humaphone, Ince-A-Phone, Melotone, Dramaphone, Phototalker, Wilverphone, Dynaphone, Wonderphone, Syncophone, Elec-Tro-Phone, Royaltone, Truetone, Duophone, Orophone, Creotone and Magnaphone. All of the above were disc-only reproducers.

† Prices on some systems varied according to equipment required.

‡ There were estimated to be about 60 nonsynchronous reproducing systems varying in price from $250 to $3,500.

§ Company had announced sound-on-film attachment.

film reproducing systems. Nonsynchronous devices had been installed only in the smaller theaters as a substitute for musical equipment. Records were obtained from phonograph distributors and played during a picture more or less in synchronism with the action. This practice was particularly effective and economical where theme songs were featured in pictures. It was not the intention of RKO Productions, Incorporated, to cater to this market in any way other than the supplying of silent picture prints.

The survey of RKO Productions, Incorporated, indicated that theaters were being wired with dual systems at the rate of approximately 250 per month. It was predicted that 5,000 theaters would be wired in 1929. Of the estimated 20,000 theaters in the United States and Canada, it was the opinion of the executives of RCA Photophone, Incorporated, that approximately 12,000 constituted the market for electrical reproducing equipment. The smaller theaters were believed to be incapable of bearing the additional expense of sound reproducing equipment.

A primary consideration in the problem faced by the executives of RKO Productions, Incorporated, was the attitude of other companies in the industry on the question. If a number of the larger distributors were to hold to their original decisions to book pictures for sound-on-film reproduction only, RKO Productions, Incorporated, would be in a better position to adhere to its existing policy. On the other hand, if a majority of companies decided to supply discs, the sales resistance of exhibitors with only disc installations towards the booking of silent versions would be too great for the RKO Distributing Corporation to meet effectively. As the company was endeavoring to place its new pictures in some theaters for the first time, this factor was of more than ordinary importance to the company. While not all the companies had reached a decision, it was apparent that the trend was toward supplying both film and disc reproduction. Some distributors were influenced by their desire to secure bookings, not only for current and future releases, but for past releases as well.

Several producers announced publicly their policies relative to synchronization systems. The Paramount Famous Lasky Corporation, in the *Film Daily* of February 1, 1929, made the following announcement:

> "Sixteen of the Paramount sound releases from February 1 to April 30, will be released only with sound-on-film versions," S. R. Kent, general manager, declares, expressing a preference for sound on film over disc recording: "It is possible that some pictures in the future will be handled with discs."

The preference of Warner Bros. Pictures, Inc., for the disc system was indicated in its statement in the *Film Daily* of February 3, 1929:

> "Warners are thoroughly sold on the disc system of recording and reproducing, and do not intend to make any changes," states Albert Warner, Vice-President. "Warners' recording will be confined to discs until some better system is evolved," Warner stated.

The Universal Pictures Corporation announced in the *Film Daily* of April 3, 1929 that:

> "Universal has equipped its sound plant for disc recording as well as film recording. Universal believes the sound-on-film system is the better, but that the present situation demands disc recording to supply houses with disc reproducing systems."

The Fox Film Corporation, which had been using only the sound-on-film method, stated in the *Film Daily* of April 4, 1929, that Fox talking pictures would be available in the future on discs also.

The Pathe Exchange, Incorporated, in announcing its policy in the *Film Daily* of April 9, 1929, stated that "all sound and talking productions previously on film only are now available also on discs."

The attitude of the exhibitors was expressed in a request from the Allied States Association of Motion Picture Exhibitors to the producers, through the Motion Picture Producers and Distributors of America, to spare exhibitors the cost of installing both devices while experimentation with the two processes continued, by making all pictures available on both film and disc.

While engaged in consideration of the problem, RKO Productions, Incorporated, released its first superspecial feature picture. As a means of determining the market situation, the company decided to offer the picture with both film and disc reproduction. An analysis of the distribution for the first month after the release of the picture showed that 41% of the total number of contracts and 18% of the total amount of rentals were for disc reproduction.

The average rental per contract on film was three times the average rental on disc. With only one month of distribution, the total rentals for disc reproduction were several times the direct costs of producing the discs.

The experience encountered in the release of the superspecial picture was believed by the executives of RKO Productions, Incorporated, to be unusual in certain respects. The total rentals and the average rentals were considered to be higher than might be reasonably expected on other pictures during the coming year. On the other hand, the number of contracts for disc reproduction was taken to be a conclusive indication of the size of that portion of the market that could be reached through the distribution of discs.

Because of the market situation and its effect upon picture revenue, the executives of RKO Productions, Incorporated, decided to supply discs as well as sound on film for the reproduction of its 1929–1930 product. Pictures would be recorded on film at the studios and re-recorded on discs at the Victor Talking Machine Company's plant in New Jersey. About 10 exchanges would serve as distributing depots for discs.

Commentary: The question of whether or not disc synchronization is superior to film synchronization is not an issue in this case. In the opinion of this company, sound on film was superior to sound on disc. The issue, therefore, was whether or not the company should lend its support to a type of product which it believed at that time to be distinctly inferior. It is clear that, although a production problem of major importance was presented, the ultimate decision would depend upon the reaction of the public and of the exhibitors. The argument in favor of continuing to record sound on the film was substantially as follows: The company believed that the product was distinctly superior. Some theaters were not equipped to reproduce sound on the disc. To present to the public sound pictures which were less perfect than they might be, involved the danger of antagonizing the public against the new sound pictures. To lend encouragement to an inferior product gave to it an element of support which might indefinitely guarantee its use in the market, instead of hastening its disappearance through competition with a superior product. It is clear also that the cost of producing a picture in which the sound was reproduced both on disc and on film would be greater than that of producing it on film alone, particularly since it was alleged that the incidental costs of physical distribution such as handling would be heavier in the case of discs.

On the other hand, there was much to be said for selling pictures with sound on disc. A factor of prime importance was that a great many exhibitors were not equipped to reproduce sound on film. The cost of such equipment was still very high. A great many disc installations, however, were available at substantially lower prices. Many exhibitors, moreover, resorted to low-price disc equipment in a desire to capitalize on the novelty demand for sound pictures, when they were unable to finance the purchase of the best disc equipment. Furthermore, other companies, competitors of RKO Productions, Incorporated, were offering these exhibitors disc pictures. It could be reasoned, therefore, that this equipment would continue in the market even though RKO Productions, Incorporated, did not support it, and at the same time the sale of product by this company would suffer through failure to meet the requirements of this class of exhibitors.

Another factor of major importance lies in the fact that with the introduction of sound the market for motion pictures ceased to be a single unit. It now became a market first for silent pictures, secondly for pictures in which sound was reproduced on the film, and thirdly for the pictures in which sound was reproduced on the disc. Considering that the cost of making sound pictures in any form was heavy and that the market was thus divided into various segments, it would appear that it was necessary for a distributor to cultivate each segment as intensively as possible. In this way, if in the course of time the disc equipment improved or exhibitor preference shifted from sound on the disc to sound on the film, then the distributor would be in a position to adjust his product accordingly.

Another influence of some importance in reaching a decision was the fact that the Victor Talking Machine Company was controlled by the same interests that controlled RKO Productions, Incorporated. Naturally a decision favoring disc reproduction would tend to insure a substantial market for the product of this affiliated company, both through the sale of RKO pictures and through the sale of records required by other producers.

Under the circumstances the decision of the company to supply sound on disc as well as sound on film was wise.

November, 1929 H. T. L.

University Film Foundation

PRODUCER AND DISTRIBUTOR—MOTION PICTURES

Sales Outlets—*Selection for Nontheatrical Films.* A nonprofit organization incorporated to produce, collect, and distribute motion pictures of scientific, artistic, and educational value made an analysis of the market and distributors for nontheatrical films, in order to determine the proper sales outlets for its products. The organization might sell the negatives or prints to distributors, distribute its films through either theatrical or established nontheatrical exchanges, or operate its own system of exchanges. The director of the organization decided to select no general policy of distribution but to utilize a number of special policies to meet the needs of special market conditions. It was decided not to sell the original negatives, but to sell prints to certain educational organizations on long-term leases, to establish exchanges in some cities, and to place prints on a commission basis with university extension divisions for physical handling, booking, or distribution.

(1929)

The University Film Foundation was incorporated to produce motion picture films of scientific, artistic, and educational value; to collect and edit acceptable film material from other sources; and to make these films available at a minimum cost to educational and cultural institutions. The Foundation was a nonprofit organization financed by subscription gifts. It was expected that income from operation would later make the institution self-supporting. To attain its objectives, it was necessary for the Foundation to make an analysis of the market for educational films, and to survey the agencies supplying films to this market, in order to determine the proper channels of distribution.

In the motion picture industry, the market was commonly considered as being divided into two fields: theatrical and nontheatrical. This division was based on type of exhibitor rather than source of production. It was the nontheatrical market in which the Foundation was chiefly interested. Within this market there were many institutions and organizations which employed educational films, as shown in Exhibit 1.

The following report is based on a survey conducted by the Director of the University Film Foundation in 1928. The

Exhibit 1

Fields for Educational Films

Public school systems
Individual schools
Extension divisions of state universities
State and county boards of education and state museums
Universities and colleges
Museums
Libraries
Churches
American farm bureau federation
United States Navy
Homes
International field
Miscellaneous (employing films to a less extent)
- Adult education groups
- Army
- Boy scouts
- Camps
- Chautauquas
- Community centers
- Conferences
- Conventions
- Country clubs
- Department stores
- Expositions
- Fraternal organizations
- Girl scouts
- Hospitals
- Industrial plants
- Labor organizations
- Lecture groups
- Lyceums
- Parent teacher associations
- Penal institutions
- Private schools
- Resort hotels
- Rotary and Kiwanis clubs
- Scientific societies
- Settlements
- Welfare organizations
- Women's clubs
- Y. M. C. A.
- Y. W. C. A.

information was largely secured through correspondence and personal interviews with people of importance in the fields covered.

The principal field for educational films for which it was possible to get the most complete information is that afforded by the Public School Systems of the larger cities. There are at least 30 of these city school systems that spend $1,000 or more annually from their central funds for the purchase and rental of films, slides, and photographs, as shown in Exhibit 2. Cities spending less than $1,000 have not been included in the survey. Most of these

EXHIBIT 2

CITY SCHOOL SYSTEMS SPENDING ANNUALLY $1,000 OR MORE FOR FILMS, SLIDES, AND PHOTOGRAPHS

California		
City No. 1	$ 4,000	
2	1,000	
3	1,400	
4	15,000	
5	6,600	
6		Annual budget of $5,000 which to date has been spent mostly for equipment
Georgia		
City No. 1	3,500	Widely variable; sometimes as high as $7,000
Illinois		
City No. 1	100,000	
Indiana		
City No. 1	2,650	
2	1,200	
Maryland		
City No. 1	2,500	
Massachusetts		
City No. 1	10,000	
Michigan		
City No. 1	10,000	
2	1,500	
3	1,800	
Missouri		
City No. 1	5,000	
2	400	Spends $5,000 a year for nature objects, etc., for exhibits
Nebraska		
City No. 1	1,250	
New Jersey		
City No. 1	8,000	
2	2,500	
3	1,000	
New York		
City No. 1	5,600	
2	34,000	
3	1,000	
Ohio		
City No. 1	6,750	
2	7,700	
3	3,000	
Oregon		
City No. 1	2,700	
Pennsylvania		
City No. 1	3,783	Spent over $8,000 in 1927 for film projectors
2	37,000	
Rhode Island		
City No. 1	1,000	
Washington		
City No. 1	2,500	

city school systems have central libraries of films, slides, and photographs which are circulated to the schools in their systems free of charge. Many of them also have departments of visual instruction under the supervision of full-time or part-time directors.

Only in a few instances do the systems employ local agencies to handle the work instead of operating central libraries. The central libraries have been built up from miscellaneous material assembled from a variety of sources.

There are approximately 90 cities in this country of more than 100,000 population and each of these could easily maintain a library of educational films of from one to several prints of the same subject. There are also approximately another 90 cities with a population ranging from 50,000 to 100,000 and these could support libraries of films for at least the elementary grades, securing films for secondary schools from state, county, or other regional libraries.

It is the inadequate supply of educational film material, rather than the matter of expense, that has held back the general use of films in the public schools. The annual expenditures of public schools and the yearly increase in those expenditures are on such a scale as to make the expenses connected with visual instruction seem inconsiderable, if not almost negligible. In this country, education has grown to be a gigantic modern industry, involving the disbursement of great sums for plant, equipment, and operation.

Approximately 25,000,000 pupils are enrolled in the public schools. Over 800,000 teachers are employed. The value of property used for school purposes is nearly $5,000,000,000. Over a billion and a half are spent annually for operation. The expenditures for public schools have grown enormously since the beginning of the century as may be seen by the table shown in Exhibit 3.

Exhibit 3

Expenditures for Public School Education in United States

	Total Expenditures	Number of Pupils Enrolled	Cost per Pupil
1900	$ 214,964,618	15,503,110	$13.87
1915	605,460,785	19,693,007	30.72
1920	1,036,151,209	21,578,316	48.02
1925	1,946,096,912	24,650,291	78.95
1926	2,016,812,685	24,741,468	81.52

The average annual expenditure per pupil in cities is considerably above that for the country at large, as the figures for 1926 from the 20 largest cities indicate in Exhibit 4.

When these amounts are considered, the matter of introducing films and pictures to a sufficient extent to place education on a visual basis seems to present few financial difficulties. Films and other materials sufficient to entirely visualize education can be

Exhibit 4

Average Annual Expenditure per Pupil in Cities

Baltimore, Md	$ 82.14	Minneapolis, Minn	$ 95.76
Boston, Mass	105.35	New Orleans, La	71.60
Buffalo, N. Y	139.48	New York, N. Y	114.78
Chicago, Ill	102.07	Newark, N. J	117.29
Cincinnati, Ohio	111.10	Philadelphia, Pa	94.38
Cleveland, Ohio	119.08	Pittsburgh, Pa	112.49
Detroit, Michigan	105.78	St. Louis, Mo	102.63
Kansas City, Mo	106.55	San Francisco, Calif	115.90
Los Angeles, Calif	129.96	Seattle, Wash	94.52
Milwaukee, Wisconsin	105.90	Washington, D. C	120.87

employed in the cities for scarcely more than 2% or 3% of the amount now spent and 5% would probably be a high figure for almost any place in the country. With the constant annual increase in expenditures, this expense will be taken care of in the normal course of progress. Here in this country where the luxury of today becomes the necessity of tomorrow, there is little doubt that films of educational value will find their regular place in the public schools.

Enough work has not yet been done in using films and pictures as actual instruments of education to see the saving of time that may result through their use. When we consider, however, the great amount of information that can be imparted in a brief space of time by a film, it will not be surprising if the introduction of visual aids effects the greatest possible economy in the expenditure of both time and money.

While no information was available for analysis, it was believed that the total amount spent by individual schools for films considerably exceeded that expended from central funds by city school systems. In this field, films were used for both instruction and entertainment.

In addition to the use of films during regular school periods, the schools often employ films for many purposes connected with their activities as community centers. A recent survey shows that there are 1,569 "standard school centers" throughout the country carrying on regularly at least two activities a week for different groups outside school hours. There is a place for films in many of these activities. There is little doubt that when suitable films can be obtained in sufficient numbers the individual schools will greatly increase their expenditures for films for both classroom and auditorium instruction and will probably make them the most important part of their recreation program as well as a leading part of the program of groups using the schoolhouses as centers.

According to a survey recently conducted by the United States Bureau of Education, 50 universities and colleges employ visual

instruction in their extension work. For a number of years the extension divisions of certain state universities and colleges have maintained Visual Education Bureaus with libraries of films and slides which they have distributed generally to schools, clubs, churches, and community groups in their own and adjoining states. About 12 of these centers are quite active and carry on a fairly large circulation of films and slides. (See Exhibit 5.) These organizations spend over $36,000 per year for the purchase or rental of materials. A number of other extension divisions carrying on a more limited activity, consisting mainly of the circulation of slides but in some cases also of films, are also shown in Exhibit 5. Extension divisions have assembled their libraries of films from the same miscellaneous sources as the public school systems. They either purchase copies of films and distribute them on a commission basis, or receive them free of charge from industrial concerns. The basis on which the bureaus are operated varies in different states. Some of them receive a subsidy from state funds. Others are self-supporting.

EXHIBIT 5

UNIVERSITIES AND COLLEGES EMPLOYING VISUAL INSTRUCTION IN EXTENSION WORK

More Active	Less Active
University of California	University of Alabama
University of Colorado	University of Arizona
Indiana University	University of Florida
Iowa State College	University of Hawaii
University of Kansas	University of Iowa
University Extension Division of the Mass. Dept. of Education	University of Maryland
University of Minnesota	University of Michigan
Oklahoma University	University of Missouri
University of Texas	University of Oregon
University of Utah	North Dakota State Agricultural College
State College of Washington	South Dakota State College
University of Wisconsin	

The work of the visual education bureaus has grown steadily but they have been under a serious handicap due to the lack of a constant supply of good films which would justify them in pushing the service. They have been obliged to get along with the materials they could secure and have done so in anticipation of the time when an adequate amount of educational films would be available.

In a few states, where the university extension divisions do not have bureaus of visual instruction, the State Boards of Education have libraries of films and slides which they circulate to the schools and community groups throughout the state. In other states a similar work is carried on by state museums. The organization of libraries of visual materials on a state and county basis represents important possibilities for the future, particularly

for serving schools and other groups in the smaller cities, towns, and rural regions, as shown in Exhibit 6.

Exhibit 6

State Boards of Education and Museums Spending $1,000 or More Annually for Films, Slides, and Photographs

American Museum of Natural History, Department of Public Education, New York City	$3,000
Amount spent for new material varies considerably but does not exceed $5.000.	
Commercial Museum of Philadelphia, Philadelphia, Pennsylvania	
No definite allotment. Has collection of 300 films and 30,000 photographs.	
Art Institute of Chicago, Chicago, Illinois	1,000
Brooklyn Botanic Garden, Brooklyn, New York	1,400
Buffalo Society of Natural Sciences, Buffalo, New York	8,150
Kent Scientific Museum, Grand Rapids, Michigan (1927)	1,332
Los Angeles County, California	3,500
New Jersey State Museum, Trenton, New Jersey	4,000
$1,500 annually for films; $1,500 for slides; $1,000 for photographs.	
North Carolina State Board of Education, Raleigh, North Carolina	5,000
Total annual budget of $8,000 with $5,000 for new films.	

No data were available on the use of films in university and college courses. It was thought, however, that the 500 accredited higher institutions in the country should be an extensive field for development, particularly since the use of films in collegiate work with larger classes would mean a relatively small increase in expenditure per student.

Many museums today are equipped with projection machines and a number carry on considerable activity with films and slides. The American Museum of Natural History in New York has probably done more in this way than any other museum. This museum has a new building, specially equipped with film vaults, editing and projection rooms, etc. It gives regular exhibitions of films on certain days of the week and has five motor cars for circulating the films and slides to the schools. The advantages that films possess for museums, however, have been little realized, probably because of the lack of films suitable for their purposes. When specially prepared films are available, the museums will doubtless adopt them generally for many purposes and will become the centers for exhibition and distribution.

Though employing practically no films at the present time, libraries offer distinct possibilities for development. It is not too visionary to look forward to the time when sufficient good films exist to justify libraries keeping copies and making them available to students and the public.

Churches represent a great field for films of educational and cultural content. Many of them already have projection machines. A large number give regular exhibitions on Sunday evenings or during

the week. Films can serve as well for many of the group meetings held in churches as for the usual meetings. Many ministers are eager to employ films. The lack of appropriate films has greatly retarded development but as soon as films of an educational nature can be supplied they will be widely and frequently shown.

The County Farm Bureaus scattered over the country have long made use of motion pictures, primarily for the improvement of agriculture. The United States Department of Agriculture has a library of over 200 films which it supplies to county agents for projection before groups of farmers. Approximately 1,200 of these county agents have portable projection machines and they usually keep the films for a month, showing them from 10 to 25 times to different groups of farmers. They also employ films of general educational value which they obtain through the American Farm Bureau Federation in Chicago. The Federation is very anxious to secure new material of good quality for the county agents and will buy copies of films outright or handle them on a rental basis. The Director of the Film Distribution states that the Federation is prepared to purchase at least 50 copies of many of the films the University Film Foundation will produce.

The United States Navy uses a great quantity of films annually, principally for entertainment but also for instruction. Nearly all of the ships are equipped with projection machines, and the Navy circulates the films from one ship to another throughout the fleet. At various times objections have been raised concerning the type of films and there is a demand to replace some of the entertainment films with material of an educational nature.

The development of 16 mm. films and projectors[1] has brought about the increasing use of films in homes. Many families now rent films for home projection and buy copies for their own libraries. A number of companies are selling and distributing films for home use, and certain producers are receiving an appreciable income from this field. The quality of the material varies so greatly, however, that people have no assurance of the standard of the films they rent and buy. There is ultimately a great market here for material of a uniformly high standard, properly produced and edited.

In the international field, there is a distinct lack of educational film material. In England, the British Association for the Advancement of Science is interested in securing educational films and is working to have the customs duty into England removed on films of this nature in order to facilitate their introduction into the schools. In France and Germany there are several regional film libraries. In Austria, there is a central institution in Vienna that has a large collection of slides and photographs which are available for educational purposes. "These are but a few examples of the groups in other countries that are prepared to disseminate the material the Foundation will collect and produce."

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[1] Standard size film is 35 mm. Any other size requires special projection equipment.

In order to determine the magnitude of the nontheatrical market, the University Film Foundation secured from the leading manufacturers of portable projectors the number of sales made during the previous 10 years. After adjusting these figures for sales by other projector manufacturers, it was estimated that approximately 35,000 standard portable projectors were in use in the United States. While the number of projectors for booths was unknown, it seemed that a conservative estimate would be around 4,000 machines.

In addition to the above analysis of the market for educational films, the University Film Foundation made a survey of the various agencies supplying films and slides to the nontheatrical market.

There were only a few companies of substantial size which distributed strictly educational films.[2] Bray Productions, Incorporated, of New York City, furnished a considerable part of the material used in visual education throughout the country. The company had a fairly large library of "educational" subjects of varying quality and length, many of which were prepared primarily for distribution to theaters. The films were usable in several fields of science. In 1928, the company was making no new material of an educational nature other than industrial films. Sale of the Bray "educational" library continued. Edited Pictures System, Incorporated, of New York City, had prints of a large number of films which it circulated to the nontheatrical field in New England. The subjects were educational and at the same time entertaining. Some prints had been sold to school systems and to university extension departments throughout the country. The Society for Visual Education, Incorporated, had prepared several years before a series of about 80 "school films" in a wide variety of subjects, including civics, nature study, physics, physical geography, regional geography, and economic history. The company had been organized by a manufacturer of projection machines with the primary purpose of developing a market for projectors. Production of films had been discontinued for some time, but an office had been maintained for the sale and distribution of the films. A fourth company was a nonprofit organization which had been operating for only a few months. The organization was operating on a

[2] See Educational Pictures, Incorporated, page 101.

small scale with plans to expand gradually as the market warranted. For 1928, the planned production consisted of three motion pictures in a scientific field.

Two large motion picture producing companies in the theatrical field had edited from film material a number of educational films for distribution. One of these companies, Pathe Exchange, Incorporated, had done the most consistent work of any company in the development of educational films. It had maintained an educational department for more than seven years, and had the largest collection of negatives of films suitable for distribution to the nontheatrical market. The director of the educational department reported sales of $370,000 in the nontheatrical field on a rental basis for the year 1927. Film subjects were scattered over every field of study. The educational activities of the second company had been discontinued, but prints of educational films usable in teaching history, civics, physical geography, and geography remained in circulation.

The Eastman Kodak Company was engaged in an experiment to determine a program for the development of educational films. The company had produced about 50 one-reel films, and had installed 16 mm. projection machines in certain classrooms of public schools in 12 cities spread over the United States. The films included 30 subjects in geography, 15 in general science, and 5 in health. The Neighborhood Motion Picture Service, Incorporated, supported principally by a manufacturer of portable projection equipment, had several series of films designed for use in the study of civics, history, geography, general science, nature, and health. The company was also engaged in editing a number of other series from material secured from other companies.

Large industrial companies, including the Ford Motor Company, National Cash Register Company, General Electric Company, International Harvester Company, Western Electric Company, and United States Steel Company, constituted one of the principal sources of films for the educational field. Over 100 films dealing with various subjects were distributed directly by these companies. In addition, several producers of industrial films maintained a distribution service for their clients. The Bureau of Mines had produced about 50 films in collaboration with industrial companies, which it distributed through its

offices to nontheatrical institutions including schools and colleges. The films were produced for the purpose of providing knowledge of the mineral and allied industries. The Y.M.C.A. Motion Picture Bureau, with offices in New York and Chicago, handled a large part of the "free" distribution of films produced for industrial firms.[3] While such industrial films had been produced for publicity purposes, the self-advertising had been kept to a minimum ordinarily and the films had proved to be of real service in education. The Bureau had over 200 subjects, mostly one and two reels in length. The service had been in existence for 14 years, and the agency had enjoyed a steadily increasing patronage, as shown by the following statistics.

Year	Programs Provided	Total Attendance	Exhibitors	Cooperating Companies
1917	1,050	352,172	85	30
1921	12,552	3,765,613	400	81
1925	19,362	5,324,550	919	124
1927	26,391	6,597,953	1,582	125

In addition to the above distributors of educational films there were 10 or more small organizations engaged in the distribution of films dealing with particular subjects such as health, travel, animal life, and history.

In marketing its films, the University Film Foundation might sell the negative or prints to distributors, or distribute through exchanges or other agencies. If the negative was sold, the Foundation would become primarily a producing organization with little or no control over the circulation of its product. As a producing organization, its influence in the field of educational service would be considerably limited. The Foundation had no equipment for the development of negative or the making of prints, but there were a number of printing concerns which were able to furnish competent service at a reasonable cost.

The average selling price of a positive print on noninflammable stock was fixed at $85 per reel. Many organizations were unable or unwilling to pay the full price of a print in order to obtain its use. Thus, the circulation of the films would be

[3] See Y.M.C.A. Motion Picture Bureau, page 172.

limited if no provision was made for booking films on a rental basis. On the other hand, a few organizations preferred to purchase prints for use and circulation. It would be uneconomical to distribute films in certain sections of the country without utilizing the aid of these organizations.

There were several alternatives in selecting a plan of distribution through exchanges: operating a system of exchanges; placing films with theatrical exchanges for booking and handling on a percentage basis; placing films for physical handling only; and placing films with nontheatrical exchanges and agencies for distribution.

The Foundation had no data on the cost of operating a system of exchanges and no personnel for sales work. A theatrical distributor had expressed a willingness to distribute the films of the Foundation on a percentage basis to be determined. The distributor had a large number of exchanges providing a nation-wide distribution. Another theatrical distributor had offered to assume the service of physical handling at exchange points at a cost of 75 cents per reel.

After consideration, the director of the Foundation decided that no general policy of distribution should be selected but that the best results might be secured from a number of special policies drawn to meet the needs of the special market conditions. It was considered unwise to sell the original negative. Arrangements were made, however, to sell prints to those city school systems operating central libraries, the United States Navy, the American Farm Bureau Federation, and other similar organizations. A provision was made that such prints would not be made available for exhibition outside the organization or school system. As a further measure of protection, the sale took the form of a long-term lease. Theatrical exchange channels were not favored because of the instability of control.

It was planned to utilize the Boston and New York offices as exchange points for distribution, and later to establish an exchange in Chicago. From these offices, films would be booked to organizations, groups, etc., and attempts made to develop additional markets for the films. Prints would be placed on a commission basis with the several university extension divisions for physical handling, booking, or distribution. Later, the territory not properly covered by the extension divisions would

be reached through an established exchange in the particular territory.

COMMENTARY: Four points may be noted relative to this particular analysis. First, it was distinctly desirable that the University Film Foundation should make as careful a market analysis as possible as to the extent of the demand for educational films before launching any kind of a program calling for their production and distribution. Secondly, the information was probably as complete and as accurate as to the potentialities of the field as could have been expected at that time. Thirdly, beyond any doubt the analysis revealed the existence of a definite and substantial demand for educational films.

In the fourth place, it is altogether possible that the survey might have resulted in conclusions that were too optimistic in nature. A great many of the sources listed as potential markets in all probability would never take a great number of educational films. The demand for such films on the part of educational institutions was still extremely problematical. Until the place of the film as a factor in education is more definitely established than at present, estimates as to its possibilities should err on the side of conservatism rather than optimism. To attempt to force the use of educational films under conditions to which they are not adapted is likely to cause a reaction and to do more harm than good.

In view of the fact that the method proposed by the University Film Foundation for the production and distribution of its negatives or prints was in a tentative form, comments relative to the suggestions made would not be worth while. A factor never to be overlooked by the organization is the fact that certain private motion picture companies, at the time this survey was made, were definitely interested in the educational field, and that it is altogether probable that if this field promised to be one of considerable size it would be entered by the companies now specializing in theatrical films. Should this event occur, the successful continuance of the program outlined by the University Film Foundation would demand the highest degree of business acumen and sagacity.

November, 1929 H. T. L.

Y.M.C.A. Motion Picture Bureau

DISTRIBUTOR—MOTION PICTURES

Merchandise Selection—*Silent Films Rather than Sound for Nontheatrical Motion Pictures.* A nontheatrical motion picture bureau distributed, primarily as a free service, industrial and educational films supplied by cooperating business firms. With the advent of sound pictures, the Bureau was uncertain whether to request its cooperators to introduce sound synchronization into their films, in order to meet the competition of such pictures being financed by large industries and distributed independently of the Bureau. Since sound reproducing equipment was expensive and most of the Bureau's patrons were not equipped to reproduce sound films, the general director of the bureau decided to wait for further developments before taking any aggressive action to secure sound pictures.

(1929)

The Y.M.C.A. Motion Picture Bureau distributed silent nontheatrical films as a service largely for industrial and educational purposes. The films were supplied by various cooperating American businesses and industrial companies. Until 1929, the Bureau had had little competition in the distribution of nontheatrical films. With the advent of sound pictures, however, several large industries financed the production of sound pictures of an industrial and educational nature, and undertook distribution of them independently of the Y.M.C.A. The Bureau faced, therefore, not only the problem of maintaining the patronage it had gained, but of expanding for the distribution of sound versions of its pictures as soon as sufficient sound projection equipment had been installed by exhibitors.

The Y.M.C.A. Motion Picture Bureau was founded by the Industrial Department of the National Council of the Y.M.C.A. in 1913 as a nonprofit service organization. Its purpose was to provide, at the lowest possible cost, film material suitable to the programs of churches, clubs, industries, schools, colleges, community and welfare organizations, and local Y.M.C.A.'s, and to discover and promote the most effective methods of adapting motion pictures to the programs of these organizations. Less than ½ of 1% of all films distributed by the Bureau were of

a semi-theatrical nature or of a strictly entertainment nature for which an admission charge was made.

During the first few years of its organization, the Bureau confined its distribution to industrial centers through the activities of local industrial Y.M.C.A. secretaries. Films were distributed from an exchange in New York City. In 1917, because of the increased demand for its films, the Bureau extended its service direct to any exhibitor through the courtesy of the Y.M.C.A. official nearest him. In 1929, the Bureau opened a new exchange in Chicago as a branch of its New York exchange. Both the New York and Chicago exchanges carried a complete stock of prints of all subjects listed in the catalogue, and supplied facilities for shipping, rewinding, repairing, and reviewing films. The New York exchange, the main office, was under the charge of the general director, who was assisted by the national secretary and a staff of bookers, clerks, and service employees. The operating personnel of the Chicago exchange was similar, though on a somewhat smaller scale. It was supervised by the national secretary, who divided his time between the two centers.

In addition to serving 1,800 local Y.M.C.A.'s in America, the Y.M.C.A. Motion Picture Bureau had rendered program or advisory service to more than 15,000 different organizations. Through its activities, more than 80,000 reels were exhibited to approximately 7,500,000 people during 1928. For purposes of information the Bureau classified this market into 4 general divisions: (1) the religious market, which included all churches and pastoral organizations regardless of denomination; (2) the educational market, in which pictures were exhibited for scholastic purposes, in every grade from kindergarten through college; (3) the business and industrial market, in which films were used for education and entertainment in businesses and industries, and for advertising purposes; (4) the general welfare market, where pictures were distributed for the use of such groups as girl scouts, boy scouts, parents, teachers, and various welfare organizations.

The Bureau did not employ salesmen. It made all contact by correspondence and through the personal efforts of Y.M.C.A. officials. The New York office maintained a list of exhibitors to whom it distributed circulars from time to time, and to whom it supplied catalogues which explained the material content

and the conditions of lease of each available picture. These catalogues were also distributed by local Y.M.C.A. secretaries. In addition, the Bureau maintained an advisory department for the purpose of aiding exhibitors with the proper selection of films. One of the general director's duties was to consult with various exhibitors regarding the benefits that might be derived from the use of motion pictures. Gratis interviews or mail service were offered at either exchange. If a prospective exhibitor desired local consultation, the general director arranged for such at the exhibitor's expense, but no other charge was made for this work.

Although the Y.M.C.A. Motion Picture Bureau had been maintained primarily for the free distribution of educational and industrial films, it did distribute a few subjects for which the owners of the films required a minimum rental fee. These subjects were accepted because of their informational value. In such cases the Bureau received the amount of the actual cost of handling only, the balance reimbursing the film owner. It required advance payment for all service on which rentals were charged. All applications for both free and rental service were sent to the nearest exchange. The Bureau's terms of service were as follows:

Terms of Service

We desire to take advantage of your free film service and agree to faithfully comply with the following regulations:

1. *To pay all transportation charges on film shipments.*
2. *To assume the expense of replacing* destroyed, damaged, or lost films. (Reels valued at about $75 each.)
3. To ship programs prepaid immediately after the last scheduled exhibition and keep a permanent shipping record with express and parcel post receipts.
4. If on a circuit, to forward films to the next exhibitor, repaired and rewound. (Films being returned to the exchange should not be rewound.)
5. *Not to hold over all or part of a program* without a special permit from the exchange from which films were secured.
6. To fill out and mail immediately a detailed report on the use of the program on the regular report cards.
7. To absolutely refrain from the use of pins, chewing gum, tire tape, and all other foreign and damaging articles in patching films.
8. To properly replace film bands on reels before returning or forwarding them to another exhibitor.

Service to be discontinued upon violation of any of the above terms.

Signed.................... Position...............

Name of Organization Address Person in charge

Countersignature by a Y.M.C.A. Secretary is necessary whenever any institution other than a Y.M.C.A. is applying for film service.

....

IMPORTANT

Exhibitors desiring reliable film service should always bear in mind that the quality of our service is dependent largely upon the promptness and care they take in returning films after specified showing dates, and in rendering complete reports.

Whenever exhibitors require particular films for definite purposes we will do our utmost to provide them, but the majority of exhibitors prefer that we arrange programs suitable for their audiences.

Motion Picture Bureau
National Council of the Young Men's Christian Associations
of the United States of America

Upon receipt of an application from an exhibitor through the regular booking channels, and 15 days or more prior to the date set for exhibition, the Bureau forwarded an advance notice to the cooperating company owning the film. This notice contained such information as would enable the company to communicate with its local representative, who in turn could get in touch with the exhibitor and set up promotional activity beneficial to both.

On the date of shipment, the Bureau mailed a notice to the exhibitor which stated the date on which the films were shipped, the assigned dates for exhibition, the mode of transportation, the title or titles of subject matter, the number of reels, and the forwarding address, if the film was to be forwarded to another exhibitor before being returned to the exchange. Attached to this notice was a report card which the exhibitor was requested to fill out and return promptly.

The Bureau's film library, containing approximately 500 subjects, represented by far the largest collection of nontheatrical motion pictures offered by a single distributor in the United States. All films were classified as follows:

Free Subjects

Industrial
Science
Y.M.C.A. Subjects
Health and Safety
United States Government Films

Rental Subjects

Religious Series
Roosevelt Series
Field and Stream Series
The Near East
Miscellaneous

The subject matter covered by these films included over 120 industries and 100 scenic subjects. A majority were presented in one- or two-reel pictures, only a few requiring four reels. All films carried in the Chicago and New York exchanges were noninflammable and of the standard theater width, 35 mm. When possible, the Bureau stocked subjects in both 35 mm. and

16 mm. widths. The general director believed that a majority of industrial and educational pictures would eventually be produced on 16 mm. gauge film in addition to 35 mm. safety prints.

In 1929, over 120 American industrial companies formed the nucleus of the Bureau's source of film supply. The Bureau endeavored, by sending circulars, to keep all industries informed about the business opportunities offered through its activities, and to supply data on its progress. In addition, it maintained a free consultatory service, headed by the general director, for the purpose of giving advice on the production of industrial and educational films. Because of the Bureau's experience, this service was taxed to the utmost. The agreement through which films were accepted for distribution by the Bureau was as follows:

AGREEMENT

Motion Picture Bureau

1. *Acceptance*—All films for the Y.M.C.A. Motion Picture Bureau must be submitted to the Bureau for review before being released to exhibitors. (The Bureau reserves the right to remove temporarily from prints any matter that may prove objectionable, after notifying the owner to that effect.)
2. *Commencement of Service*—Circulation may begin at any time for a period of 12 months or more from date of receipt of prints.
3. *Advance Notices*—Advance Notices of all scheduled bookings of your film will be sent to you as soon as bookings are made. This will permit your salesforce to get in touch with your distributor or agent who can offer to cooperate with the local exhibitor in securing as large attendance as possible at the exhibitions. It also gives you the opportunity to send posters, literature, or samples for distribution in these vicinities by your own distributor.
4. *Reports*—Exhibition reports will be rendered annually, giving the city, date, number and place of exhibitions, and the type and size of audiences.
5. *Special Service*—Every effort will be made to promptly take care of requests coming direct to companies for the use of their pictures, which are referred to us.
6. *Cost*—A charge is made to organizations placing their films in this service on the basis of $35 per reel (1,000 feet or less) per year, payable within 30 days after the receipt of prints.
7. *Renewal*—In order not to interrupt film distribution, bills will be rendered in the current month of expiration date of this agreement for renewal for the ensuing year. If renewal is not desired bill will be rendered for additional distribution given after expiration date at the rate of $1 per reel per week.
8. *Film and Cases*—All films must be of theater standard width on noninflammable stock, hot wax processed wound on 10-inch spools and provided with regulation I.C.C.—32 metal shipping cases, of such capacity as agreed upon.
9. *Shipment of Films*—Ship all films and adress all correspondence to the Y.M.C.A. Motion Picture Bureau, 120 West 41st Street, New York City, unless otherwise advised.
10. *Guarantee*—This Bureau does not guarantee any definite number of bookings or exhibitions to any type of class of audience. We point to performance for other concerns and our record for the past years (see folder) and to the possibilities of the field in the future.

11. *Responsibility*—Every precaution is taken to safeguard the films, but we assume no liability for damage, destruction or loss of film other than the amount which we may be able to collect for regular filed claim for damage or loss caused by common carriers or exhibitors. (Films are covered with fire insurance while in our exchanges.)

Date..................

In accordance with the above terms...
will provide.........................prints of...........................
....
to be distributed from our exchanges, and within 30 days after their receipt will forward check to the amount of $............ on the basis of $35 per reel per year to cover service charge.

....
Director (Motion Picture Bureau) Secretary
Countersigned
.... Per..................................
Comptroller

The production costs of the negatives and the working prints of films supplied to the Bureau ranged from $500 to $30,000 for a complete story. A majority were produced for between $2,000 and $5,000. Cooperating companies usually retained the film negative and supplied the Bureau with the requested number of prints. Not more than 10 prints of 35 mm. width (noninflammable stock) and 6 prints of 16 mm. width were accepted for 1929 distribution. The minimum number required was 2 prints in each size. In some cases, the film owner limited the number of available prints, and likewise their distribution. The Bureau operated 12 months during the year, and as a result was able to give each print between 60 and 110 showings annually. The life of the average subject was approximately 4 years, although those films entirely devoid of any style element enjoyed a much longer period of use by print replacement.

Over a period of years the Bureau had found that $35 per reel, per year, adequately covered the cost of distribution. This fee had not been changed since its adoption in 1920. If the Bureau experienced an annual profit free from the incumbrance of a previous debt, such surplus was used to purchase new equipment. Since all distribution contracts were for one fiscal year only, the Bureau could either raise or lower the fee it was charging upon the order or recommendation of the controller of the National Council of the Y.M.C.A.

The introduction of synchronization in 1927 apparently had little effect on industrial and educational films at that time. In 1929, however, there was a noticeable trend toward the use of synchronization in such films. The Fox Film Corporation, for

example, had conducted an exhaustive study of the nontheatrical market for motion pictures, and shortly thereafter introduced a portable Movietone machine for recording and projecting synchronized nontheatrical films. This machine was also used to gather Fox Movietone News. The Fox Case Corporation, a subsidiary of the Fox Film Corporation, produced a film for the Studebaker Corporation at an estimated cost of more than $20,000, and in July, 1929, was reported to be producing a similar type of film for the International Harvester Company. Both these companies had cooperated with the Y.M.C.A. Motion Picture Bureau for over five years.

The general director of the Bureau had reason to believe that other large motion picture companies planned to follow the Fox Film Corporation in this new field. He was aware, furthermore, of the activities of the University Film Foundation[1] and other similar organizations that were anxious to gain a foothold in the educational market for talking pictures.

The Y.M.C.A. Motion Picture Bureau had not determined what effect the activities of such organizations might have on its operation. The director of the Bureau believed, however, that the large motion picture companies possessing national distributing systems and fully equipped newsreel trucks could produce, distribute, and exhibit educational films without increasing appreciably their general operating costs. It was his opinion, furthermore, that because of the advertising advantages offered by talking pictures, many large industries would not object to the extra cost of production, distribution, and exhibition charged by these companies.

In the director's opinion, the Bureau might adopt one of two plans: either appeal to the cooperating industries immediately to introduce synchronization into their productions, or wait for them to act of their own accord. If the former plan were adopted, little difficulty would be experienced from the standpoint of film supply, principally because the costs of producing synchronized sound track superimposed upon old negative, or of disc registering, were not excessive. Talking films of average quality, furthermore, had been produced for $5,000 per 1,000 feet. Exhibition, however, was the real problem. Few, if any, nontheatrical exhibitors were equipped with sound reproduction projection machines.

[1] See University Film Foundation, page 159.

Moreover, the cost of these machines, their multiplicity of types, their lack of interchangeability, and the technical knowledge necessary for their successful operation, rendered improbable many immediate or near future purchases of them by strictly nontheatrical exhibitors. There was a possibility that experimentation would result in the perfection of a reliable sound reproduction machine which would be within financial reach of the small nontheatrical exhibitor, and which would not require technical knowledge for its operation.

If the Bureau adopted a waiting policy, it was probable that those cooperating industries desiring sound film service would be forced to establish their own distribution and exhibition of sound films and would continue to distribute only their silent versions through the Bureau. The Bureau, except for refusing to accept inflammable films, had refrained from making any specific requests of the cooperating companies. In the past the cooperating companies, on their own initiative, had provided for all changes made necessary by the introduction of improved methods in motion picture production. For example, in the early stages of the Bureau's development, one of its cooperators imported French Pathe pictures for its use. The success of these European industrial pictures encouraged American companies to produce similar domestic pictures for release through the Bureau. The introduction of the 16 mm. width film caused a similar reaction.

The general director favored the policy of waiting. He believed that if economical and reliable sound projection machines were devised, the Bureau's supply of talking films would be forthcoming. Portable projection, by means of newsreel trucks, in his opinion, would not serve the nontheatrical needs. He believed that the large motion picture companies would not continue long to offer sound productions to the nontheatrical market.

He admitted the probable success of the producers and distributors of strictly educational films, such as the Q.R.S. DeVry Corporation, Eastman Kodak Company, and University Film Foundation, realizing, however, that their success would depend upon a correct analysis of educational needs, upon economical distribution, and upon rentals and sales which included ample teaching manuals. The director, furthermore, was not thoroughly convinced of the relative merits of 100% synchronized industrial

and business films. In his opinion, some of the pictures produced, though effective from a pictorial standpoint, were ruined in parts because of the disturbing sounds that resulted from the oversensitiveness of the microphone in picking up background noises. He favored colored pictures as more effective for educational presentation.

Commentary: The Y.M.C.A. Motion Picture Bureau was faced with two particular problems: first, the maintenance of its existing patronage; second, the possible necessity of distributing sound films.

Since the Bureau undertook distribution of films as a service and not for the purpose of making a profit, it may reasonably be argued that it was not concerned with the retaining of its existing patronage. Only in the event that a sharp decline in the number of films distributed would result in serious organization and financial problems, or in the event that other agencies were unable or unwilling to render the service which experience had indicated was demanded by the public, could it be said that the Bureau was particularly interested in retaining its volume of distribution. It is apparent, from the facts in the case, that a real demand for nontheatrical films existed, and that the Y.M.C.A. Motion Picture Bureau was meeting this demand. As this demand expanded, however, the Bureau could not reasonably expect to cover completely the field to which it was particularly adapted. It is also clear that the organization was not adapted to entering some fields at all. Thus, it had not entered the entertainment field. It is possible that it could not expect to concentrate its efforts on the distribution of strictly educational films, since films designed for this specific use could probably best be produced and distributed by men who were specialists in problems of classroom instruction.

It is a significant point that the Bureau did not employ personal representatives. It apparently depended largely upon the use of catalogues distributed by local secretaries to acquaint the public with its service. This would appear to be a somewhat questionable policy, if the Bureau was sincerely interested in, and actively concerned with, an extensive development of this field. It meant that only such persons would be served as by chance came to know of the motion picture bureau. Even some churches have found it necessary to develop aggressive methods of familiarizing the public with their work. Apparently the Bureau did not have a definite program, aggressively developed, which pointed to distinct objectives.

The most important problem before the Bureau was actively defining which one of the nontheatrical markets it believed it was best adapted to serve. It might confine its attention to this market. It

might cooperate with certain well-known government and private motion picture enterprises, all of which are non-profit making in character and therefore not interested in profit, for the purpose of delimiting the fields to be covered by each of these various agencies. The Bureau might then undertake to cultivate exclusively its particular field to the utmost. It would be necessary, in that event, for the Bureau to sponsor actively the planning and direction as well as the distribution of the films for its particular market. Assuming that these responsibilities would probably result in additional expense, the commentator believes that this expense would be warranted. The Bureau would probably have to charge for a larger number of its films than before. Experience indicates, however, that people appreciate the things for which they pay, more than the things which are done for them gratis.

The problem of distributing sound films is an issue incidental to the one just discussed. The suggestion of superimposing sound on the old films is probably not wise, as results have not been very satisfactory where such experiments have been tried. The question raised in the case as to how important sound may be for all nontheatrical films is a real one. In certain types of these films, sound undoubtedly has value. In others, however, it is of questionable worth. For those films in which sound is a real asset, the problem of sound film projectors was at one time serious, but was to be gradually overcome through the sale of portable projectors for sound films. So far as the Bureau is concerned, its decision, relative to the use of sound, would be dependent, in part, upon its answer to the major issue in the case.

It would thus appear that the Y.M.C.A. Motion Picture Bureau has had and should have in the future a real place in the distribution of nontheatrical films. It would appear, however, that it had reached the point where a more definite policy should be determined upon.

November, 1929 H. T. L.

Paramount Famous Lasky Corporation

PRODUCER—MOTION PICTURES

PRODUCTION—*Operating Procedure of Production Department.* This case contains a discussion of a motion picture company's production organization and procedure, the company's relationships with its employees, and the forms used in analyzing and controlling production and distribution of motion pictures.

(1929)

In 1929 the Paramount Famous Lasky Corporation owned and operated studios in Long Island, New York, and Hollywood, California. Approximately 70% of the corporation's total production took place at the Hollywood studio. The Long Island studio specialized in short subjects, and in addition, produced from 10 to 12 feature pictures each year.

The production organization of the company was designed to effect the maximum amount of flexibility. Directors, as a rule, were free to proceed unmolested with their respective assignments. Supervision by associate producers was of an advisory nature. It was of little importance in productions assigned to outstanding directors. Studio cabinets, consisting of the studio production manager, assistant production manager, directors, supervisors, and studio executive manager, held weekly meetings to discuss the current problems of the various productions. In this manner each picture benefited from the ideas of all production officials. As a rule, the vice president in charge of production was present each week at either the studio cabinet meeting in Long Island or the one in Hollywood. It was his duty to coordinate the production function with the other major functions such as finance, distribution, and exhibition. The organization of the production department is shown in detail in Chart II.

MATERIALS OF PRODUCTION

Literary Materials.

Story departments were maintained in both the home office in New York City, and the Hollywood Studio. They were oper-

PRODUCTIO

PARAMOUNT FAMOUS

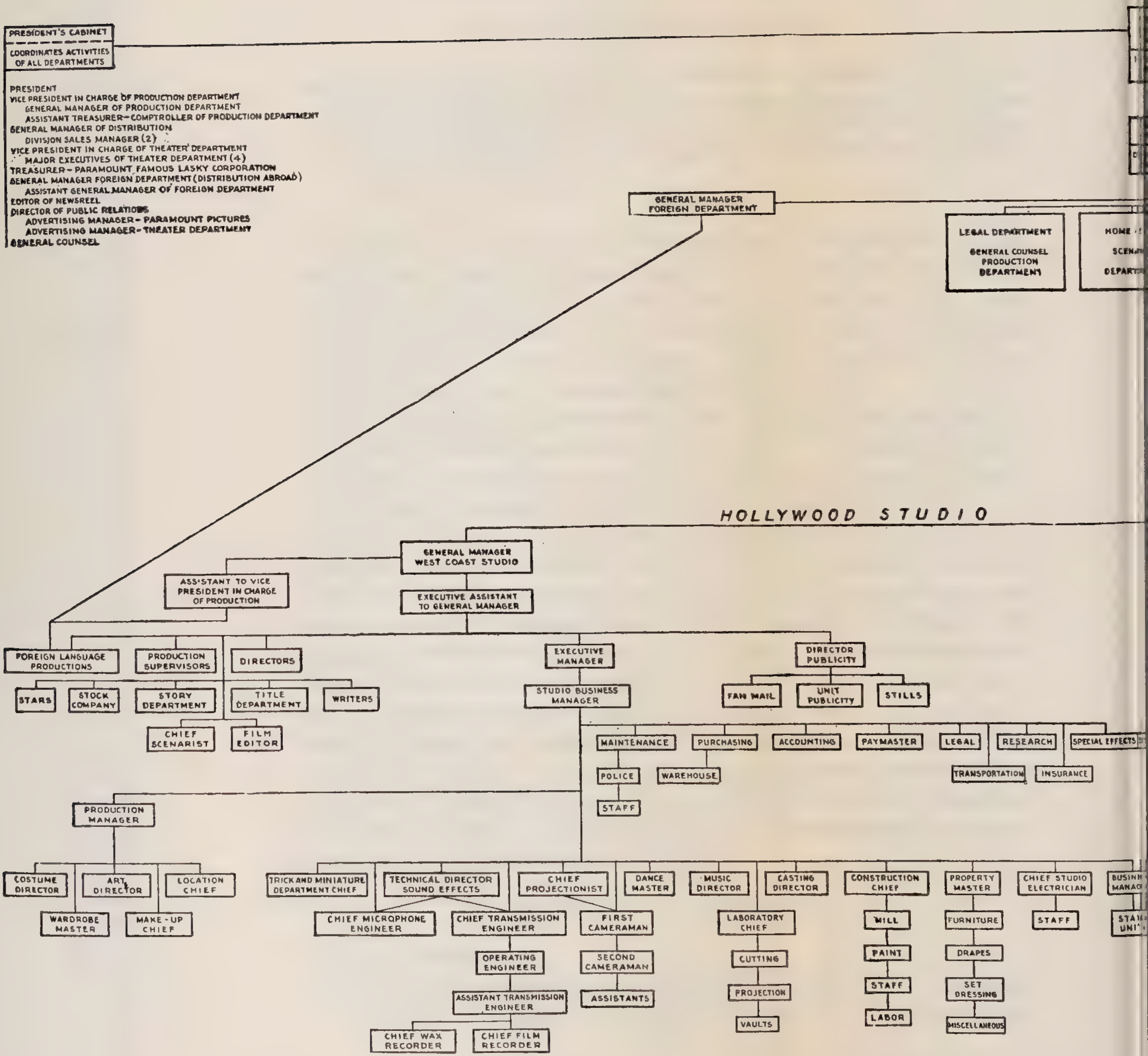
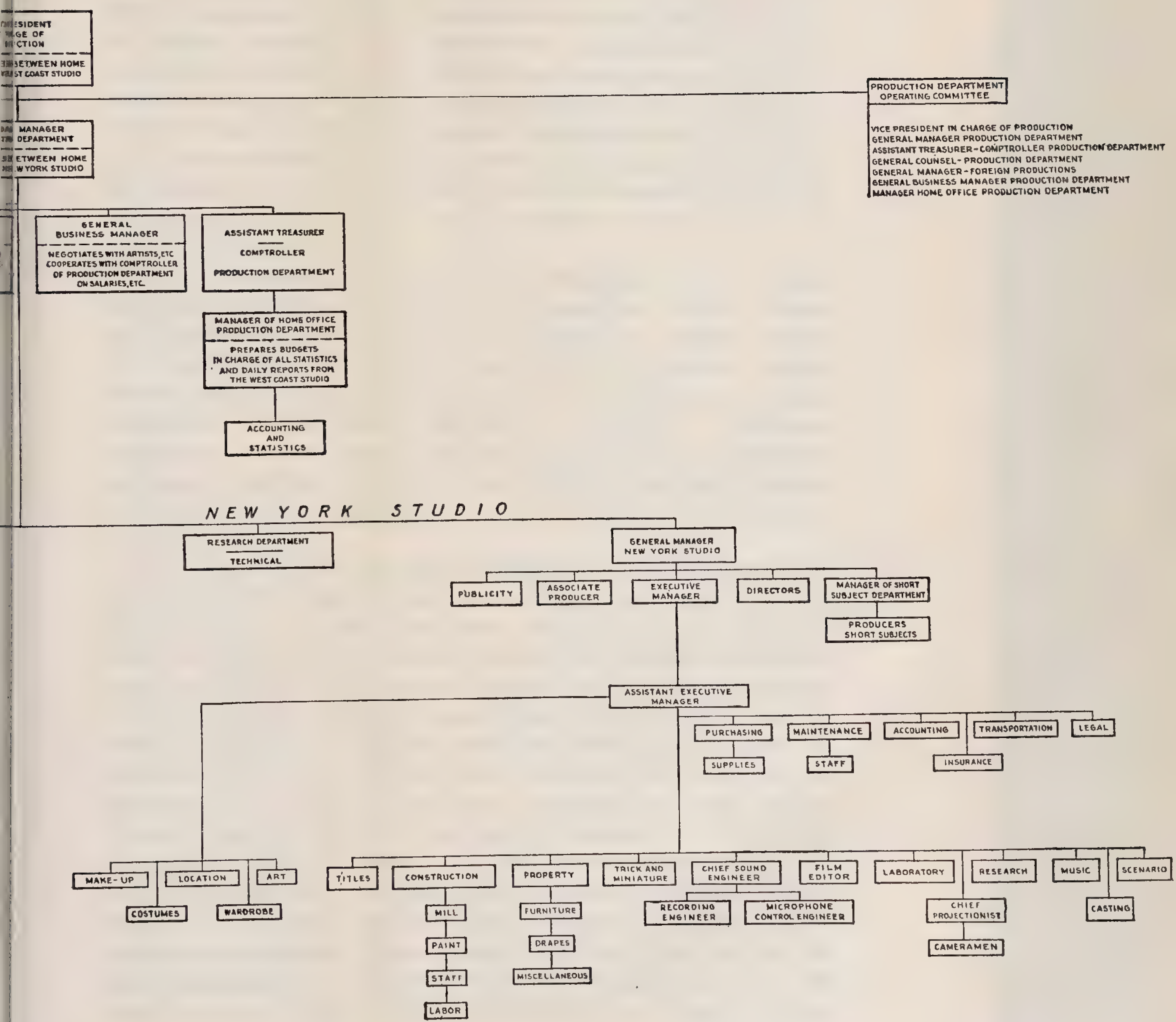


CHART II. Organization Chart of Production Dep

DEPARTMENT

LASKY CORPORATION



nt of Paramount Famous Lasky Corporation, 1928.

(*Facing p. 182*)

ated as separate units, although the former, because of its proximity to the theatrical, book, publishing, and style center, was considered first in line of authority.

The story departments obtained information and maintained records of current, past, and future stories, magazine articles, plays, poems, and all other materials that might be used as plots for motion pictures. The department managers made contacts with publishers, writers, playwrights, and composers, and endeavored at all times to have current knowledge on matters pertaining to the literary world. To facilitate the proper selection of material, it was necessary for them to understand the story requirements of motion pictures, the censorship laws of the several states, and in particular the type of plot best suited to each Paramount actor, actress, and director.

The story department maintained separate readers to glean material for motion picture plots from magazine articles. Generally magazine articles were made available to motion picture producers in advance of publication; to be of value as a motion picture plot it was necessary that a serial story be made available long before the last episode appeared in a magazine. Additional material was secured from "fan" mail, actors, actresses, directors, company employees, especially those holding important positions in the production departments, and numerous other voluntary sources.

The two units of the story department submitted briefs of all reviewed material to the studios once each week. It was also customary for the New York division to supply the California studio with the reviewed books and articles. This was necessary because of the lack of literary facilities in Hollywood. If the production heads at either studio were interested in the briefs, the story was studied in detail and a rough script, or motion picture version, was prepared by an adaptor. If the script was approved, it was edited and usually submitted to the Motion Picture Producers and Distributors of America, or some similar organization, for censorship. In some cases censorship was not considered until after the story rights had been purchased. After approval of a story, a price limitation based on the executives' opinion of the motion picture value of the story was set, and the legal department was instructed to complete the purchase. In acquiring story rights careful consideration was given to copy-

rights, and to pictorial, publishing, dialogue, and musical rights. Finally, the script was either assigned for production or catalogued for future use. Exhibit 1 shows the form of record kept for all story materials purchased.

All catalogued materials were frequently re-evaluated by the committee in charge. Amortization was based upon the various executive opinions of each script's worth as a motion picture plot.

EXHIBIT 1

RECORD OF STORY MATERIALS PURCHASED BY PARAMOUNT FAMOUS LASKY CORPORATION

RECORD OF OWNED PROPERTIES
Assigned*

Date Acquired	Assigned to	Cost	Total
	Author		
	1 Title	3,000	
	2 "	2,000	
	3 "	5,000	10,000
	Author		
	etc.	etc.	etc.

RECORD OF OWNED PROPERTIES
Unassigned†

Date Acquired	Title	Amount	Total

ADVANCE‡ ACCOUNTS OF ORIGINALS TO WRITERS

Name of Author	Option	Amount

* Authors contracted to write stories listed under their respective names.
† Catalogued stories of which no assignments had been made.
‡ Advances against future stories, or stories in process.

Scripts of questionable production value were inventoried at $1 each.

Players.

The home office was supplied with a summary record of all players working on flat salary contracts. This record, shown in Exhibit 2, was known as the Stock Company List. It was revised currently by means of telegraphic advice from the California studio. All stock players were retained in Hollywood, but upon request of the Long Island studio, were transferred temporarily. Stock players, as a rule, were well-known character actors.

EXHIBIT 2

STOCK COMPANY RECORD KEPT BY PARAMOUNT FAMOUS LASKY CORPORATION

*Stock Company List**

Available Players	
Name	Name

Players at Work			
Artist	Present Assignment	Next Assignment	Date of Next Assignment

* The studio record contained additional information on such matters as the date set for completion of the present assignment and estimated number of days the next assignment should be in process.

A separate record was kept for high-salaried stars not classified as stock players. That record contained information on an actor's present occupation, on the time of his availability for the next production in which he would take part, and on the title

and starting date of that production. All assignments were made approximately one month in advance of the date designated for starting actual production. This precaution was taken to prevent delays arising from changes in assignments caused by such uncontrollable factors as outbursts of temperament on the part of actors.

The report on directors under contract served the same purpose as did the Stock Company List and the report on high-salaried stars. The form of this report is shown in Exhibit 3. It was revised every 10 days because, as a rule, changes in directorial assignments were numerous. These changes, however, rarely occurred after a production was in actual process. All directorial assignments were made at least 30 days prior to production. Directors' salaries ranged from $100 to $750 a week and upward.[1]

Exhibit 3

Record of Directors Kept by Paramount Famous Lasky Corporation

Report of Directors Under Contract

Name of Director	Title of Production in Process	Start	Title of Next Production	Start

Like its competitors, the Paramount Famous Lasky Corporation used various contracts for actors, actresses, and directors. Some contracts stipulated a certain salary for one picture, others a salary for a series of pictures, and still others a stated weekly salary to be paid on the basis of the ratio of the number of hours in which the particular actor was actually employed in a week to the total number of working hours in the week. All stock actors were paid on a flat salary basis.

Aside from contracts for single pictures, those of the Paramount Famous Lasky Corporation were, in general, for six months'

[1] See *Motion Picture Almanac*, 1929 edition, page 111.

duration with subsequent options at the expiration of each six months' period for five years. Usually, five-year contracts stipulated definite salary increases operative at each renewal. That clause, however, was not an essential requisite. If for any reason the company should not elect to take up its option, the contract automatically became inoperative and the actor became a free agent. The actor did not have a similar privilege of rejection. The longest straight contract was for twelve months.

In general all salaries, regardless of position, were paid weekly. Extras, temporary electricians, and others not under contract were paid daily.

To keep first-hand information available for executive use, complete lists were tabulated and brought up to date frequently on all contractual information having to do with the actor roster. Separate forms such as that illustrated in Exhibit 4 were made out for stars, stock company, directors, writers, and musicians.

Production executives and other executives holding important positions were placed under irrevocable five-year contracts. To insure against their resignation within that period of time, their salaries for the full five-year period were placed in escrow. This unusual precaution was taken because of a realization of the importance of executive positions in the motion picture industry, and especially of the value of assured loyalty.

EXHIBIT 4

CONTRACT RECORD KEPT BY PARAMOUNT FAMOUS LASKY CORPORATION

Artist	Present Salary	Future Salary at Next Option	Date of Next Option

Physical Properties.

Included among the more tangible materials of production were such items as sets, costumes, general studio supplies, raw film stock, cameras, sound equipment, etc. In general the purchase and maintenance of these materials were supervised by the

studio executive manager, whose duties pertained principally to the business aspects of production.

The art department, which operated in close conjunction with the directorial staff, had charge of the making of all sets necessary to the production of pictures. It was equipped and prepared to design an unlimited variety and number of structures. The functions performed were carpentering, painting, plastering, model making, and wall papering.

The property department performed the function of supplying all decorative furniture and a large supply of heterogeneous small articles. A corps of experienced employees was maintained to purchase and to construct the articles required. They were assisted by a research division which maintained a library of volumes dealing with types of furniture, costumes, and designs of all periods of history.

Mechanisms required for illuminating purposes in both indoor and outdoor photography were maintained in the electrical department. A large number of scenes were taken under artificial lights whether the work was done by day or by night.

The costume department functioned much in the same manner as did the art department. The studio wardrobe required a large and ever-changing supply of clothing of all kinds and of jewelry.

The photography department maintained a number of expert photographers and kept in stock cameras of all types.

Raw film stock, unless in natural color, was purchased along with regular supplies. Natural color film and its accessory camera equipment, as well as sound recording equipment, required special contract agreements.

PLANNING PRODUCTION

Planning the Program.

As a general rule the Paramount Famous Lasky Corporation planned its production about the first of April. The general manager in charge of distribution stated the number of pictures desired for the coming year. He based his estimates on his own and his associates' opinions in regard to the number of pictures the company could distribute profitably.

Upon determination of the distribution department's requirements, the studio cabinet operative committee, which comprised

the chief production executives, mapped out the production program, its classification and total cost, and the material content and cost of each picture. These data were submitted to the president for recommendations and approval. While neither the manager in charge of distribution nor the president of the Publix Theaters Corporation, the Paramount subsidiary theater operating company, was entitled to vote on final decisions, their opinions regarding the submitted program and their recommended changes were influential in the drawing up of the final program.

The Program.

Motion pictures in general were classified as either starring or special, and were subdivided as sound or silent pictures. In special productions cast with a star of great box office value, the picture became both a starring and a special production. A third classification was at one time made for silent pictures which had a few talking sequences. In 1929, however, because such pictures had practically disappeared from the market, this subclassification was not used. Exhibit 5 shows how the Paramount Famous Lasky Corporation presented its 1929–1930 program for distribution.

To facilitate production and release control, the company's 1929–1930 program was segregated into four divisions, classified as Personality Pictures, Commander Specials, Leader Specials, and New Show World Specials. Personality Pictures were the least costly. Their individual budgets were based on a statistical knowledge of the starring artist's value as a box office attraction. Where more than one Personality production was assigned to a star, a total budget was computed from the individual picture estimates. In such cases, the control department was interested only in the total amount, and as a result some pictures profited at the expense of others. There was a wide range in star salaries; it was estimated that the average star received $2,500 a week while working.[2] Three or possibly four Personality Pictures represented the maximum number assigned to any one star. Stories for these pictures were selected currently, and in many cases were written by the scenario department especially for the assigned artist. Personality Pictures were scheduled as illustrated by Exhibit 6.

[2] See *Motion Picture Almanac*, 1929 edition, page 111.

EXHIBIT 5

PRODUCTION PROGRAM OF PARAMOUNT FAMOUS LASKY CORPORATION FOR 1929–1930, AS CLASSIFIED FOR DISTRIBUTION

1929–1930

Paramount Productions (36)	Paramount Personalities (29)	Paramount Short Features
Harold Lloyd*	3 Charles "Buddy" Rogers	52 Paramount Sound News
Moran and Mack	2 Maurice Chevalier	104 Paramount Silent News
The Marx Brothers	3 Gary Cooper	*Two-reel Shorts*
The Dance of Life	1 Richard Dix	24 Christie Talking Plays
Mysterious Dr. Fu Manchu	2 Jeanne Eagels	6 Paramount Talking Comedies
The Vagabond King	3 Richard Arlen	30
The Love Parade	3 Nancy Carroll	*One-reel Shorts*
Glorifying the American Girl	4 William Powell	32 Paramount Talking Singing Acts
The Four Feathers	4 Evelyn Brent	12 Screen Songs
Illusion	2 Ruth Chatterton	6 Talkartoons
The Virginian	1 Hungarian Rhapsody	50
Applause	1 Soul of France	
The Children		
Greene Murder Case		
Sweetie		
4 Clara Bow		
4 George Bancroft		
Pointed Heels		
Return of Sherlock Holmes		
Escape		
The Lost God		
Woman Trap		
Charming Sinners		
The Lady Lies		
Behind the Make-up		
Youth Has its Fling		
Fast Company		
Kibitzer		
Sarah and Son		
The Gay Lady		

* Produced by Harold Lloyd Corporation. A Paramount release.

Commander Specials ranked third in quality and cost of production. As a rule the stories for these pictures were secured prior to the beginning of the production season. The casts of Commander Specials did not contain high-salaried stars; generally they were made up of well-known featured players, none of whom was advertised as the particular attraction. The average featured player earned $750 per week while working.[3]

Leader Specials were the company's highest quality regular feature pictures, and often were given extended-run exhibition.

[3] See *Motion Picture Almanac*, 1929 edition, page 111.

EXHIBIT 6

SCHEDULE OF PERSONALITY PICTURES KEPT BY PARAMOUNT FAMOUS LASKY CORPORATION

Personality Pictures

Number of Pictures	Units	Starting Date	Budget	Total
3	Buddy Rogers			
	1			
	2			
	3			
2	Richard Arlen			
	etc.			

All stories for Leader Specials were selected and assigned, and in some cases were in process, in advance of the production season. In some cases such important players as George Bancroft and Clara Bow were featured in conjunction with an all-star cast. In others, the title of the story predominated, and the cast of stars was featured as of secondary importance. Because of the impossibility of accurately measuring public opinion, Leader Specials were known to have exceeded more costly pictures in total box office receipts.

New Show World Specials were the Paramount Famous Lasky Corporation's extended-run pictures that commanded $1.50 and

EXHIBIT 7

COST SUMMARY OF 1929–1930 PRODUCTIONS KEPT BY PARAMOUNT FAMOUS LASKY CORPORATION

Summary of Cost—1929–1930 *Productions*

Number of Productions	Classification	Total Cost	Average
	Personality Pictures		
	Commander Specials		
	Leader Specials		
	New Show World Specials		
Total			

Total Cost (not including New Show World Specials*)____________
Average Cost (not including New Show World Specials*)____________

* Because of their production costs and greater exhibition value, New Show World Specials were not included in the general average costs.

$2 admission prices when prereleased for roadshow purposes. "Glorifying the American Girl," a Ziegfeld production, assigned to a high-salaried director, cast with all star players, and staged on an elaborate basis, was typical of this type of picture. In that particular case, the use of Ziegfeld's name represented a large cost in itself. Because New Show World Specials required extensive preparations, as a general rule their production was started prior to the opening of the regular production season.

For control purposes a summarized cost statement, such as is illustrated in Exhibit 7, was compiled for all four classifications.

RELEASE CONTROL

Tentative Release Schedule.

Immediately following the approval of the production program, the studio cabinet prepared a tentative release schedule for the first six months of the new theatrical year. Such a schedule is shown in Exhibit 8. This schedule was limited to six months because of: current changes in public demand; unavoidable production substitutions; the possibility of acquiring rights to some current story or stage play success for immediate production; the general consensus of opinion that a more extended schedule would be unwise; and finally, the probable introduction

Exhibit 8

Tentative Release Schedule Used by Paramount Famous Lasky Corporation

Date________________

Starting Date	Pre-release Date	Production Number	Title of Production	Director	Cast	Remarks
		Current year: numbers beginning with #1				Current reports on each production that should be made known to the executive staff.

of new devices for the production of motion pictures. In 1929, because of the almost certain advent of a larger exhibition screen, all-color films, and perhaps the third dimension camera, the matter of production innovations became one of unusual importance.

Tentative release schedules were used to inform the general production manager of changes in release dates as they occurred from time to time throughout the year. These enforced changes were not uncommon, and were the result of unavoidable production delays.

Final Release Schedule.

Approved tentative release schedules were put into final form after all changes were definitely decided upon. As a rule, changes in the final release schedule occurred in one in ten pictures. Since these changes affected the entire mechanism of distribution and exhibition, it was necessary for the production department to fill in vacancies by substitution. Substitute pictures were always available. They were derived from productions finished ahead of schedule, pictures filmed before the production season, and road-shows not yet released for regular distribution.

Final release schedules, such as that shown in Exhibit 9, were sent immediately to members of the distribution department, to production executives, and in some cases to managers of Publix theaters and other theaters.

Short subjects were listed on a schedule similar to that illustrated by Exhibit 9. Generally they required less than one week for production. Consequently, their release dates were determined in final form without recourse to a tentative schedule.

Paramount pictures were released on an average of one each week, with two released during one week in every four. This system did not always operate as planned, but as a general rule changes were infrequent. During the 1929–1930 season every fifth picture released by the company was a costly special. In the president's opinion this was an unwise plan. He believed that the market could not absorb so many costly cinemas, and that as a result none of them would return the maximum possible income. He believed that the company should produce more pictures of the quality of Personality Pictures and Commander Specials.

The Paramount Famous Lasky Corporation in 1929 was producing an unusually large number of costly pictures. This

EXHIBIT 9

FINAL RELEASE SCHEDULE USED BY PARAMOUNT FAMOUS LASKY CORPORATION

1929–1930 Final Release Schedule 1st Quarter

Release Date	Production Number	Kind of Picture	Synchronization	Sound	Production Title	Director	Cast	Date Booked
1st Quarter Sept.	Cumulative total dated back to the company's origin.	Sound version only, musical score and sound effects, or all-talking.	Dialogue, musical, etc.	On film or on disc.				
Oct.								
Nov.								

Preceding Schedule No.__________ Date issued____________
Replaced by this Schedule No.____ Date issued____________

situation was a direct result of the advent of talking pictures and the subsequent availability of stage stars, stage plays, musical comedies, and operettas. To insure its position in the motion picture industry, the Paramount Famous Lasky Corporation, and likewise its competitors, had purchased numerous stage successes and had procured famous stage actors at high salaries. Because of the time element in musical pictures, immediate production and release was necessary for them. The time element was not so important in the case of dialogue plays, but because the stage actors were under contract, the company could not afford to delay production. It might have withheld release of its dialogue pictures until a more opportune time, but in so doing would

have risked the possibility of obsolescence due to the introduction of new devices. Furthermore, it would have tied up large sums of working capital.

In addition to the release schedules for the first six months or first two quarters of the theatrical year, the studio cabinet prepared a tentative release summary for each of the four quarters. This schedule was based on the entire year's production and was concerned primarily with the total number of pictures allocated to the various seasons. Because of the inadvisability of releasing the best quality feature pictures during late spring, summer, and early fall, however, consideration was given also to the type and classification of each picture.

Careful allocation of such pre-release productions as New Show World Specials was not necessary. The Publix Theaters Corporation controlled a sufficient number of extended run theaters in the New York theatrical district and in Los Angeles, California, to provide all necessary theater facilities for these pictures, even though their exhibition dates should overlap.

As a general rule, box office receipts varied during the four seasons of the theatrical year. The first quarter, September, October, and November, was fair, gaining momentum in late October. In the winter season receipts were greatest. In the early part of the spring season, receipts equalled those of late fall; in the late spring they were approximately the same as in September. The summer season usually was the least profitable. In 1929, however, the introduction of talking pictures, a decline in the popularity of legitimate plays except in New York City, and the widespread use of theater refrigeration forcasted a leveling out of box office receipts. With this fact in mind, production officials of the Paramount Famous Lasky Corporation diverged from the usual practice of varying the number of releases according to the season of the year. Tentative quarterly release schedules could be changed without seriously affecting the mechanism of distribution and exhibition.

THE PRODUCTION PROCESS

Selection of Personnel and Production Materials.

The production process of a picture usually began with the directorial assignment about 30 days prior to the date set for starting actual production. Upon assignment the director, in

conjunction with the casting, art, and sets departments, selected respectively the cast, locations, and sets. When possible, Paramount contract actors were given first preference in casting. At the same time a scenarist prepared the script in final form, making all necessary additions and corrections, determining the number of sets to be used, the amount and text of the dialogue, the number of titles, the musical scores, and the general pictorial effects.

Because of the introduction of sound, all Paramount actors, regardless of their experience, submitted to a thorough voice diagnosis, known as the "screen voice test." This process was expensive but nevertheless indispensable. Before the advent of talking pictures the company's production officials had a complete knowledge of all prominent players' camera possibilities. Eventually the same would be true of their voices.

Subsequent to the directorial assignment for a picture, the studio production manager appointed an associate producer to supervise the making of the picture, and the studio executive manager appointed a business manager to take charge of the business aspects of his assigned pictures. These two, together with the director, decided upon a definite production schedule and detailed budgets, the total of which should not exceed the amount allocated to that specific production.

Dialogue parts were usually assigned immediately after the cast had been selected. Rehearsals began one week in advance of the date set for starting production, and were held again on the sets just before the shots were taken. Rehearsals had not been the customary practice before the introduction of synchronization.

In arranging the schedule, plans were made at the same time for taking both indoor and outdoor shots. This precaution was taken to insure progress of the picture against inclement weather. Schedule delays cost between $5,000 and $10,000 a day, the average cost being $8,000. The more difficult scenes were assigned to the last stages of production. To avoid waste in time during which high-salaried actors were employed, the scenes in which they appeared were arranged in sequence.

In the production of a picture, motion pictures of each scene were made from two or more perspectives. Often different types of cameras were used in order to reduce the risks due to errors in the judgment of the directors, photographers, or actors. After

each day's work the negative was taken to the laboratory for development. After the negative was developed and dried, it was carefully polished by hand and inspected for defects. A print was made from the negative as soon as possible, in order that changes suggested by the director, supervisor, or other members of the production department might be made before the sets and other effects had been dismantled.

Upon the completion of a production, the director and his assistant, in conjunction with the cutting department, assembled the negatives in continuous form in approximately the order in which they finally were to be arranged, trimming them to the desired length, and if necessary, inserting temporary titles. The negative was then "light tested" and one copy taken off, which was known as the "answer copy." The answer copy was projected, and upon approval of it by the director, his assistant, the supervisor, and other members of the production department, the negative was pronounced ready for positive printing and subsequent distribution.

Dating from assignment and continuing through production, all directors and supervisors attended the weekly studio cabinet meetings. Each director reported on the progress of his production, the difficulties faced, the coordination of the production schedule with the budget, and any contemplated changes, and on various other details. The problems were discussed by the group as a whole, and ideas exchanged among the several directors and supervisors. Detailed reports of these meetings were retained by the studio production managers for their respective groups, and by the general production manager for both studios. In addition, a statistical report, such as that illustrated in Exhibit 10, was prepared for the home office.

In addition to the weekly report, daily wires were sent from the California studio to the home office, and vice versa. As a rule they were night letters of from 100 to 1,000 words. They contained information concerning stories, script, artists, costs, transfers, release dates, substitutions, and all information and requests that should be made known immediately to the designated official. The general production manager retained copies dated back two weeks. Inasmuch as the general production manager visited the Long Island studio frequently, daily reports from that studio were not required.

Exhibit 10

Weekly Production Control Report Used by Paramount Famous Lasky Corporation

Studio Negative Cost	Story	Home Office Overhead	Actual Cost to Date	Estimated Finished Cost	Budget	Weeks in Process
Includes all studio expenditures, including studio overhead to date.	Cost Price or Book Value.	A flat percentage of the total actual cost.	Cumulative weekly cost.	Varies each week. Estimates given each week to take care of conditions that have affected the total cost.		

FINANCIAL CONTROL OF THE PRODUCTION DEPARTMENT

In order that the company's executives might have a bird's eye view of the current financial status of production, they were furnished with weekly summary reports giving cash disbursements for each feature picture, and total expenditures for all feature pictures. Such reports were sent from the Hollywood studio and from the Long Island studio. Separate expenditure reports were submitted for short subjects, which were produced only at the East Coast studio.

An estimated final cost schedule, shown in Exhibit 11, presented a detailed report of expenditures of individual productions as contrasted with their respective established budgets.

Half-year summaries listed the actual results without reference to the expected results. Half-year summaries for the previous four years were made available for current use by the general production manager.

Current records of receipts from pictures were maintained for executive use. These records served as guides regarding public opinion and, as such, regulated production. Exhibit 12 shows a record of profit, giving a comparison of the total negative cost of pictures with the actual receipts from those pictures. Exhibit

EXHIBIT 11

ESTIMATED FINAL COST SCHEDULE USED BY PARAMOUNT FAMOUS LASKY CORPORATION

Release Date	Production	Estimated Final Cost	Budget Allowance	Over	Under
1st Quarter					
2nd Quarter					

Average Cost

Average Budget

Average Over

Average Under

Number Productions	Amount
____________	______
____________	______

EXHIBIT 12

PROFIT RECORD USED BY PARAMOUNT FAMOUS LASKY CORPORATION

Record of Profit
Cash for Negative
Comparison of Actual with Receipts

First Six Months, 1929			
Week Ending	Weekly Budget	Cumulative Actual Receipts	Difference
			Gain—Black Loss—Red

13 gives the form used for a summary of rentals by groups of pictures and by individual pictures.

COMMENTARY: This case is of value chiefly for its informational content rather than because of the direct issues that are involved. It affords an example of the operative procedure of the production department of one of the largest motion picture producers in the world. The

EXHIBIT 13

RENTAL SUMMARY USED BY PARAMOUNT FAMOUS LASKY CORPORATION

SUMMARY OF RENTALS

Group	Cumulative to First Full Month	May	June	July	Aug.	Sept.	Total to Date
Personalities................							
Commander Specials.........							
Leader Specials..............							
New Show World Specials....							

SUMMARY OF RENTALS

Picture	Cumulative to First Full Month	May	June	July	Aug.	Sept.	Total to Date

organization of other major producers differs, in some detail, from that here described. In the main, however, the operation of this department is very similar among the large producers.

A number of factors had made necessary certain changes in production organization. The introduction of sound, the use of color, and the gradual adoption of the large screen caused many changes. The attempt to get away from block selling to some extent, and the apparent attempt to offer a larger number of plays in completed form to exhibitors before the actual sale, were important factors. Increased efforts to adapt stage plays to screen presentation, a desire to produce a larger number of program pictures and a smaller number of extremely costly ones, and efforts to adapt dialogue pictures to foreign exhibitors, all introduced changes of greater or lesser significance in the production departments.

Of these factors, the introduction of sound probably created the greatest change in the organization of motion picture producing companies. This innovation has been indicated in the case. Most of the other changes, though important, were of secondary significance, not likely to affect the major production organization of larger producers.

November, 1929 H. T. L.

ACTORS EQUITY ASSOCIATION

LABOR UNION—MOTION PICTURE INDUSTRY

LABOR ORGANIZATION—*Unsuccessful Attempt to Unionize Motion Picture Players.* In 1929, as a result of the large number of stage actors appearing in sound motion pictures, the theatrical labor union, in an attempt to bring motion picture production under its jurisdiction, instructed its members to accept parts in pictures only under the terms of the union's contract and only in casts in which all the players were members of the union. After a period of unsuccessful efforts to bring about complete cooperation of the leading members of the union, during which the producers adopted an attitude of passive resistance to the demands of the association, the attempt to unionize motion picture players was temporarily abandoned, and the union rescinded its edict barring the appearance of its members under other than union contracts and in other than union casts.

(1929)

On June 5, 1929, in Hollywood, California, the Actors Equity Association, the recognized theatrical labor union, announced its intent to bring under its jurisdiction the production of motion pictures. Effective as of that date, the association instructed its members to take part in the production of sound pictures only under the terms of the Equity Contract, a contract form which it had issued to take the place of the Standard Form Artists Contract, then in use by most producers. The association further directed its members to accept parts only in casts in which all the players were Equity members. The Association of Motion Picture Producers, an organization which included all companies with studios on the West Coast, refused to recognize Equity. At the end of over 11 weeks of controversy, Equity leaders announced that they were temporarily abandoning the struggle. Five months later, in January, 1930, there was no indication of renewed activities on the part of the union and the consensus of opinion was that the 1929 attempt to introduce Equity contracts into the motion picture field had been definitely unsuccessful.

Prior to 1929, the activities of the Actors Equity Association had been confined to the legitimate stage and to vaudeville, in which fields it had gained national recognition. The proposed

extension of authority came as a result of the introduction of sound pictures. Such pictures had greatly diminished the popularity of the legitimate stage and of vaudeville. They also had caused large numbers of stage actors, a majority of whom were members of Equity, to go to Hollywood to act in sound motion pictures. Equity leaders apparently believed that these developments might seriously weaken their union. Then, too, the sound field gave promise of successful exploitation.

Equity advanced three reasons to justify its position: first, the unfair treatment of actors by motion picture producers; second, the alleged failure of motion picture producers to observe contracts; and third, the protection of play producers against actors evading stage engagement contracts.[1]

The Actors Equity Association was organized in 1913 for the purpose of protecting stage actors against unjust working conditions. The union was officially recognized by stage producers at the culmination of the General Actors Strike in 1919. Equity's commanding position was reaffirmed in 1924, at which time a new agreement was made with the stage producers. In 1926, Equity had attempted unsuccessfully to organize actors in the motion picture industry.

In the latter part of 1928, the Equity Council and Mr. Frank Gillmore, the president of Equity, sent questionnaires to members of the association in the Los Angeles district. The questions, in substance, asked the members if they were in favor of the Council's passing a resolution prohibiting members from acting and speaking parts in talking pictures unless all speaking parts were filled by Equity members. Of the 1,196 votes cast, 1,087 favored the resolution.

During the first 6 months of 1929, Mr. Gillmore and several other officials of Equity took up their residence in Hollywood to study conditions there. In deciding to invade Hollywood, the association was influenced by certain complaints which it received from actors to the effect that at times they were required to work continuously for from 18 to 36 hours and that studio conditions were unsanitary. The players stated, further, that actors were told at the completion of a brief engagement to hold themselves ready for retakes. This meant that, although retakes might involve only a day or two of extra work, and although the actors

[1] *Exhibitors Herald World*, June 15, 1929, page 115.

might not be called on for 10 days or two weeks, no other studio or director would employ them during the interval. Furthermore, when such players reported for a so-called retake they frequently found that in reality they were employed to make a whole new sequence.[2]

Complaints also were made by stage producers who said that numerous actors of the legitimate stage were breaking their stage contracts in order to appear in motion pictures. Such action was denounced by Mr. Gillmore, who pointed out that actors who broke stage contracts were not only unfair to stage producers but also to their fellow Equity members, whose positions were jeopardized by such action. He also cited the cases of several actors who had been suspended from Equity and who had found more profitable employment in motion pictures during their period of suspension, thus defeating the purpose of the penalty. The most effective method of correcting these practices seemed to Mr. Gillmore to be the unionization of players appearing in motion pictures.

While the intentions of Mr. Gillmore and the Equity Council were known quite generally, there was no evidence of activity on the part of motion picture producers to forestall attempted organization, or in any way to strengthen their own position in the event that Equity made a comprehensive drive. Furthermore, there was nothing to indicate that an attempt had been made by Equity to secure better conditions through an appeal to the producers directly, either individually or as a group.

During the first week of June, 1929, members of Equity residing in Los Angeles were notified that on June 5 and thereafter they were to accept only Equity contracts from producers of talking or sound pictures. This action was tantamount to declaring the industry organized. Contracts entered into before June 5, however, were to be observed but were not to be renewed. The Council's resolution upon which notification was based, read in part as follows:

> Resolved that on and after the 5th day of June, 1929, Equity members may work only in companies making sound and/or talking pictures and operated by any producer
>
> (a) When all members of said company or of any company or companies controlled or operated by the producer, who speak

[2] See *Theatre Guild Magazine*, October, 1929.

a line or do work on the stage, set, or a location, of an individual character or nature are members of Equity in good standing and continue to be such during the term of employment of any Equity members, and

(b) When the producer has fully performed and is performing the covenants of each employment contract with each Equity actor in each of his companies.

That part of the resolution which provided for punishment of members who violated the new rules read:

> Further, resolved that any member (including all those whose resignations have not been accepted by the Council) who shall fail to observe each and every of the foregoing resolutions may be suspended for a prolonged term and otherwise penalized at the discrimination of this Council.
>
> Further, during said term of discipline, suspension, or both, no member of the association (except those having existing contracts as aforesaid) shall appear in the same cast with such persons or accept employment with (legitimate) musical comedies, stock or pictures (sound or talking pictures) or in any field over which this Association has jurisdiction.

Equity made clear that its demands applied only to players under contract for one week or more. "Bit" and "small part" players were to be organized later. Special contracts would be available for them at an early date. According to Mr. Gillmore, extras were not asked to join Equity because the union could not benefit them enough to warrant their making expenditures for memberships and dues.

On June 4, the proposed Equity Contract was submitted to Equity members as well as to producers. A general letter was mailed to all members of the association; its contents undertook to justify Equity's stand on the points already mentioned and to secure the confidence of the members of the association.

The Equity Council also sent a letter to the producers telling them of the benefits they would derive from an "Equity Shop." It was pointed out that a union control over players in sound and talking pictures would guarantee the faithful fulfillment of all contractual obligations by actors, and that the standardization of working conditions under an Equity Shop would prevent certain producers from engaging in practices that were unfair to their competitors. In conclusion, the Council stated its willing-

ness to arbitrate any of the rules contained in the Equity Contract before an independent umpire, and to abide by the award, if the producers would do likewise.

The producers ignored both the letter and the contract. At the time of Equity's announcement, producers in general were using the Standard Form Artists Contract which had been instituted by joint action between producers and actors shortly after Equity's first attempt to unionize actors appearing in motion pictures. This form covered all contracts between actors and producers, including contracts made for one picture, for a number of pictures per year, and for definite periods of time, and various miscellaneous agreements. Definite time contracts usually covered stock or featured players and a majority of the stars whose services were engaged on an optional basis for a specified number of years. The usual optional period was for six months, at the end of which time it was the producer's privilege to continue or terminate the contract. Optional periods often called for predetermined salary increases for the players involved. Unless signed for a specific amount per picture, all contracted players were paid on a weekly salary basis.

There were several essential differences between the Equity Contract and the Standard Form Artists Contract. The Equity Contract specified that Equity Shop would be required; that is, all members of a cast who spoke a line or who did work of an individual character had to be members of the association. Equity was not a closed union; in order to become a member, however, an applicant was required to present a bona fide assignment made on an Equity Contract.

The Equity Contract was a term contract, while the Standard Form Artists Contract was an open one. The former called for a definite term of employment, which, unless otherwise designated in the contract, was four weeks. Under the Standard Form Artists Contract, unless a longer period was definitely specified, a player was assured of a minimum of one week's work and of work thereafter until the completion of the photographing of the character he played. In some cases this feature was beneficial to the actors involved, especially when production continued for a considerable length of time and other more profitable work was not available. In many cases, however, when the standard contract did not establish definite termination dates, actors were

prevented from signing for pictures the production of which was scheduled to start in the near future.

The Equity Contract established a 48-hour working week. In defining working hours, the contract specified that Sunday work was to be obligatory only where lawful. Actors working on that day would be paid at overtime rates for a minimum of 8 hours. Overtime was also defined. Rehearsals were to be considered as work and paid for as such. This policy was a departure from the practice in the legitimate theater, where Equity allowed four weeks of free rehearsals for dramatic attractions and five weeks for musical comedies and spectacles. The departure was explained by the fact that the legitimate actor was paid for every performance after the play opened, while the film actor was paid only during the making of the picture. No effort was made under the Equity Contract to fix a minimum salary. The standard contract, on the other hand, did not limit the number of hours of work that might be required of an actor during any one week for which he was paid a flat salary. Nearly all other workers in the industry, camera men, electricians, etc., had hours specified and terms for overtime in their contracts.

Members of Equity laid great stress on the 48-hour week. They pointed out that in many cases under the standard contract actors were forced to work long hours in order to speed up production and thereby reduce costs. Non-Equity members, however, contended that under the existing studio system, many contract players received weekly checks although they might not have been called to the studio at all during that week, and thus were compensated for other weeks when they worked 60 or 80 hours.

In addition to these major differences between the two contracts, there were several other differences. The Equity Contract required Equity's approval of the standard rules and regulations of producers. Furthermore, according to its provision for arbitration procedure, Equity became a party to the contractual relations. The standard contract provided for referring disputes to the Academy of Motion Picture Arts and Sciences. In the Equity Contract, arbitration was provided for under rules of the American Arbitration Association, a procedure which had been followed to a considerable extent by Equity in the legitimate theater. Equity's contract gave officials of the union the right of access to the studios. In addition, the contract required

that producers notify Equity regarding the selection of casts and changes therein. It further provided that actors would not be required to undertake dangerous or hazardous work. Moreover, the producer would not be permitted to use any substitute voice for that of an actor except with the actor's written consent.

The president of Equity stated[3] that no drastic action would be taken immediately, nor would a general strike be called. Equity players would simply refuse to answer studio calls unless their Equity contracts were signed. Organization of a relief committee to raise subscriptions for the actors who might suffer on account of their loyalty to Equity was announced.

Equity claimed that about 80% of the players who were under studio contract and at least 85% of the stage directors who had been brought to Hollywood from New York were members of its organization. Membership on the West Coast was said to have grown from 1,218 in the fall of 1928 to 2,800 in June, 1929, as a result of the influx of stage players and an "undercover" drive for new members. The president was reported to have stated that, although all members might not have paid the full amount of their dues, they were, nevertheless, still members of the organization. He also stated that the Council in New York which passed on all resignations was to accept no resignations during the present emergency.

There was no available list of Equity members under contract, but, according to the *Motion Picture News:*

> An authentic tabulation of 11 companies shows the total number of players under term contracts was 277, with 110 of the stage actors new to pictures signed since January. Detailed by studios, the figures are:

Fox	59	players under contract;	37	from the stage
M-G-M	55	" " "	26	" " "
Paramount	43	" " "	12	" " "
Warner	27	" " "	11	" " "
First National	19	" " "	6	" " "
Pathe	21	" " "	10	" " "
United Artists	12	" " "	2	" " "
R-K-O	11	" " "	4	" " "
Universal	24	" " "	1	" " "
Tiffany-Stahl	3	" " "	0	" " "
Columbia	3	" " "	0	" " "

> There are 167 picture players under contract to producers. Of these it is estimated all but 50 are Equity members now.[4]

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[3] *Variety*, June 12, 1929, page 34.
[4] *Motion Picture News*, June 8, 1929, page 1943.

At the time of its announcement, Equity had not communicated with any of the trade unions with interests in the theatrical industry, asking for sympathetic resolutions or assistance. Current agreements between the Studio Technical Craft Unions and the Association of Motion Picture Producers had three years to run and could not be broken except by orders from the Council of the American Federation of Labor. It was reported, however, that a provision in the agreements provided for abrogation on brief notice by either party. Labor organizations represented in talking pictures were: International Photographers; International Brotherhood of Electrical Workers (electricians and "sound engineers"); International Alliance of Theatrical Stage Employees and Motion Picture Operators of the United States and Canada; International Brotherhood of Painters, Decorators, and Paperhangers of America; United Brotherhood of Carpenters and Joiners of America; and American Federation of Musicians.

The International Alliance of Theatrical Stage Employees and Motion Picture Operators of the United States and Canada had been struggling hard to effect a complete unionization and reported more progress for 1929 than in any previous year. That organization and the American Federation of Musicians had an interlocking agreement covering strikes. No similar agreement had ever been obtained by Equity. Other unions, however, including those of carpenters, musicians, and stage hands, had voluntarily given support to the actors in 1919 and generally were credited with having been the decisive factor in Equity's victory at that time. Equity claimed that its relations with all unions were as friendly as they were in 1919, but that as yet it was not calling on these organizations for help.

Equity regarded as significant the current weekly communication of the American Federation of Labor, in which appeared a strong endorsement of the association's stand in the sound and talking picture situation. All of the above mentioned organizations were affiliated with the American Federation of Labor. A general strike of all unions would close nearly every theater in the country.

The Association of Motion Picture Producers, for several reasons, was not in sympathy with the cause of Equity. It was reported[5] that the president, Mr. Cecil De Mille, had said that

[5] *Film Daily*, June 7, 1929.

an enforcement of the Equity Contract would restrict the source of talent. This talent, because of the nature of the industry, was necessarily drafted from all walks of life and was in many cases employed for only a short time. Experience had convinced the producers that the public demanded a constant flow of new talent, and any restriction on the source of such talent might seriously hamper the progress of the industry. In the second place, the association of producers objected to the unionization of artistry wherein the value of talent varied from a few dollars to $10,000 or more per week. It maintained that collective bargaining, a principle of unionization, was impossible under such circumstances. A third objection centered on the effect that the Equity Contract would have on the cost of production. One producer[6] estimated a probable increase ranging from 25% to 100%, according to the type of picture. Under existing conditions the cost of actors' salaries varied from 5% to 20% of production costs, the higher percentage occurring when actors under contract were idle for long periods and their salaries were included in the overhead of current picture production. These costs, the producers estimated, might be doubled if the Equity demands were granted.

While producers had not committed themselves definitely, it was generally believed that they would act in unison, even though in past labor troubles there had been a tendency for individual producers to avoid cooperative action. There was a general opinion that producers, if necessary, would cast pictures with non-Equity actors, and that, to insure each other of an adequate selection of actors, they would exchange contract players. Many producers believed that Equity's movement in Hollywood was not made in the interests of the organization, but rather from a desire on the part of several Equity officials to insure their positions. The producers further substantiated their contention by citing the fact that Equity had not approached them for an amicable settlement prior to its edict of June 5.

Equity's announcement of June 5 was of vital importance to the actors as well as to the motion picture producers. In general, the actors apparently would have appreciated an amicable relationship between the producers and Equity. A few were ready to support Equity's cause. Nearly all the free lance actors

[6] *Variety*, June 12, 1929, page 5.

who had been in Hollywood for years were reported[7] as being in favor of the entrance of the association into the talking picture field. Others saw no necessity for Equity in Hollywood. The high salaried stage actors appeared to be willing to forsake the association and thereby sacrifice possible future stage engagements for the chance of greater financial reward and wider publicity in talking pictures.

Several motion picture actors stated their doubt that the Council of Equity in New York understood the motion picture industry. It was their belief that the standard contract governed every condition desired by Equity except the 48-hour week, with which the producers were experimenting. They also maintained that it was no fault of the producers if working days were lengthened through numerous technical or sound interferences. For example, the weather often rendered conditions unfavorable for recording sound on the studio lots.

A petition signed by 33 prominent members of Equity requesting a closed meeting of paid-up members in California to vote on the Equity Shop was criticized by the president, Frank Gillmore, who held that only 11 of the 33 petitioners were paid-up members. This group stated that the removal of the West Coast Advisory Committee from power in the Equity Council had left motion picture talent without representation.

The governing board of the Academy of Motion Picture Arts and Sciences,[8] an organization representing a large number of prominent film players, did not express an opinion regarding the situation. The secretary,[9] however, stated that the problem seemed to be one for actors and producers to settle between themselves. He stated, further, that the standard contract which had been in operation for 18 months had been negotiated and twice amended by the actor-members and producer-members of the academy in the interest of harmony and justice within the

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[7] *Variety*, June 12, 1929, page 5.

[8] "The Academy was formed May 10, 1927, in Hollywood by producers, workers, actors, directors, writers, technicians, and producing executives, to take aggressive action in meeting outside attacks which are unjust; to promote harmony among the membership and among the different branches; to reconcile internal differences which may exist or arise; to adopt ways and means to further the welfare and to protect the honor and good repute of the profession; to encourage the improvement of the arts and sciences of the profession by the interchange of ideas, and by awards of merit for distinctive achievements; and to take steps to develop the greater power and influence of the screen." *Film Daily Yearbook*, 1929.

[9] *Variety*, June 12, 1929.

industry and as a necessary preliminary to the academy's larger purposes.

The Motion Picture Producers and Distributors of America questioned[10] the success of Equity's attempt to organize the actors in the film industry. Film producer-members of this association believed that Equity had weakened its position in permitting the important actors of the legitimate theater to work in motion pictures under contracts with options that could be renewed as long as the producer sought to avail himself of the optional rights. It was further claimed that Equity had destroyed the so-called one-night stands, which were traveling theatrical performances shown not more than a few times in any one town, by sponsoring unionization to the point where high wage scales had absorbed all profits. For the same reason, it was argued, the lesser principals in pictures would suffer from the organization of labor in Hollywood to a point where salaries of the cast would have to be sacrificed. It was stated that a guaranty of five years in pictures, if offered by producers, would serve to counteract any sacrifice which an actor might make by not appearing on the legitimate stage.

Some producer-members pointed out that since the most important actors were already under contract, the strength of Equity would be lessened during the time required for the expiration of those contracts. These members believed, furthermore, that the fact that actors could obtain very high salaries in talking pictures would cause them to reflect seriously before declining studio offers. They also contended that the motion picture producers were in a stronger position than were the legitimate producers at the time of their struggle with Equity, since picture producers were ready to enter the legitimate theater by financing stage productions for later presentation on the screen. Such productions could be staged with screen players as actors.

Throughout June, 1929, the producers' policy was one of watchful waiting during which time there was no outward evidence of activity to draw actors from the cause of Equity. Equity officials were engaged in organizing an offense which they believed would compel producers to recognize the associations' demands. A series of weekly meetings was held, at which the Equity leaders met and addressed the actors. Presumably because of the lack

[10] *Variety*, June 12, 1929.

of sympathy on the part of the Los Angeles papers other than the *Record*, a four-page weekly bulletin edited by the president of Equity was printed in tabloid form. Three committees were appointed to conduct the following aspects of the campaign: ways and means, relief, and investigation of members. Support of the movement was pledged by the American Federation of Labor and the Los Angeles Labor Council. The message from president Green of the American Federation of Labor read as follows:[11]

> It is difficult to understand why your organization is confronted with open hostility and determined opposition from those who know the value of organization and who claim to exercise that right themselves.

Early in July, a new ruling was made by Equity forbidding its members to accept contracts in silent pictures. At the same time it was decided to call upon each working member to contribute 10% of his weekly earnings to the regular relief fund as long as the struggle continued. As a result of the activities of the group of 33 actors mentioned heretofore, Mr. Gillmore appointed Mr. Francis X. Bushman as a committee of one to bring dissenters into harmony with the campaign organization. In addition to acting in this capacity, Mr. Bushman conducted unofficial negotiations with three representatives of the producers' association. Producers informed him that they were willing to make changes in the standard contract and would arbitrate the contract demanded by Equity, but would not deal directly with Mr. Gillmore or with anybody else representing Equity. The president of the producers' association stated,[12] further, that the producers would have met Equity representatives if the latter had approached the producers in the interests of making an agreement before issuing its ultimatum of June 5.

A difference of opinion as to the conduct of the campaign arose among the supporters of Equity. One contingent favored a more militant campaign and deplored the day when Equity would be compelled to call upon union labor for help. Mr. Bushman, in behalf of the other faction, addressed a meeting with a plan for constructive and dignified activity leading to an

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[11] *Film Daily*, June 27, 1929.
[12] *Variety*, July 10, 1929, page 21.

"honorable victory." The two factions failed to reach a satisfactory agreement although all parties continued to work for the cause as directed by the Equity president.

In an effort to prevent producers from signing contracts with Equity members, Equity filed suit in Superior Court against Warner Bros. Pictures, Inc., and Mr. Tully Marshall, charging that the producing firm "induced and coerced" Mr. Marshall into breaking his agreement with Equity by signing a contract to make a picture, and "threatened to continue to coerce and induce other members of Equity to break their agreements."

At the end of July, a survey of the situation revealed the following results of the campaign. Attendance at Equity meetings approximated 3,000. The association had announced an increase in membership of 2,200 actors. Nine volunteer committees were engaged in organization. Approximately $700 was paid out daily for relief. Total weekly expense was about $5,000. Over 200 members in support of Equity had refused to report for work. Productions with non-Equity casts were reported to be delayed by surreptitious endeavors on the part of workers who were sympathetic with Equity.

On the other hand, producers stated that 164 Equity members had accepted the standard contract. The large producers were lending contract players to each other and to some independent companies; this was an uncommon practice. A few of the smaller producers had cast pictures with Equity players. It was reported that many studios had employed actors under verbal contracts.

Equity had not called on allied labor unions for assistance, for the stated reason that such a request would mean an enormous sacrifice in employment and money to the affiliated participants. The union was opposed to the calling out of contract players because it believed that such a move might antagonize public opinion. The United States Department of Labor had sent two representatives to negotiate a settlement. The general program on the part of Equity had been to maintain loyalty among its members while seeking to increase its strength.

August 1, 1929, had been named as the date for the levying of a heavy schedule of fines and suspensions of from four months to a year for all Equity and non-Equity members signing contracts contrary to Equity instructions. This announcement had created consternation in some quarters. Hollywood merchants

suffering from business depression were complaining of the "silence" policy.

The first attempt to end the deadlock occurred during the first week of August when a joint committee representing the producers and Equity met at the request of six actors who had previously constituted the motion picture group without representation in Equity Council. The meeting was arranged by the representatives of the Department of Labor. Secret deliberations were held in the presence of the mediators. After a few days' consultation, the members of Equity were requested to vote on the question of what percentage of a cast was to be composed of Equity members. The association voted to accept not less than an 80% Equity membership in casts, to be specified as: principals, small parts, "bit" actors, professional actors, and chorus people. Producers refused to accept any cast percentage, but under terms of their proposed settlement offered to agree that once a person became a member of Equity, he would not be allowed to desert it through nonpayment of dues or otherwise, and would continue to enjoy the benefit of employment in studios.

The producers proposed that an entirely separate and distinct branch of Equity be established for the motion picture industry, and that all members who had offended Equity should be reinstated without penalty. As a result of this proposal, Equity offered a large measure of autonomy for the Los Angeles branch and a reinstatement of all except those members who had openly fought the association.

Dissension in the ranks of the Actors Equity Association was brought about by a public statement of Miss Ethel Barrymore, vice president of the association, criticizing the manner in which Mr. Gillmore had conducted the campaign. Miss Barrymore stated that Mr. Gillmore had induced the members to endorse the 80%–20% plan on casts which already had been rejected by the producers. This proposal, she declared, was not a solution to the problem, Mr. Gillmore replied, denying that any agreement with the producers had been reached at any time and stating that no "solution" was presented to members, but merely a request for endorsement of the committee's action on the proposed 80% Equity casts.

Mr. Gillmore was further criticized for his long inaction and especially for his failure to produce a sympathetic strike on the

part of the stage hands and other studio employees affiliated with the American Federation of Labor. Many closely connected with the situation were of the belief that if these labor union men had gone on strike, Hollywood would have been so paralyzed that the producers, despite their vast resources, would have accepted the Equity terms.

On August 18, 1929, the Equity Council rescinded its edict barring the appearance of its members under any other than a union contract. In explaining this action, President Gillmore attributed the failure to the work of "borers from within." One group of members had publicly denied their association with Equity; another group of members had been critical of, if not hostile to, his generalship; and a third group had broken the rules of Equity and had gone to work. More harmful than the activities of these groups, however, in the opinion of the president, was the failure on the part of the vice president to maintain a discreet silence until negotiations had been completed. He stated that it had been impossible to secure the assistance of labor organizations at that time. Further, the proposals of the producers were such that acceptance would have meant a definite humiliation.

Subsequently, statements were made to the effect that Equity had temporarily abandoned its attempt to unionize motion picture players. By the end of 1929, however, it was generally believed that the attempt to force acceptance of Equity Contracts had definitely failed.

COMMENTARY: There is not a sufficient amount of supporting data in this case to furnish the basis for an opinion as to the justice of the plea made by the Actors Equity Association. The case does, however, have value in that it furnishes an example of the type of problem confronted by those engaged in the production of motion pictures.

The existence of a chronic oversupply in Hollywood of persons seeking positions as players with motion picture companies is well recognized. This situation was aggravated with the coming of sound pictures, since this invention attracted a great many people from the legitimate stage who swelled the number of unemployed. Even assuming that producers did not yield to the very natural temptation to take advantage of this condition, a considerable amount of dissatisfaction and irritation would inevitably develop. It would be surprising, too, if organized labor did not make some effort to deal with the attendant problems. Whether or not the Actors Equity Association should have sought to extend its jurisdiction to this field, or, as

an alternative, have urged the promotion of a separate organization for motion picture actors, is an open question. There is reason to believe that a separate organization would ultimately have proven more effective. It would appear from the case that full cooperation between Equity and other labor organizations affiliated with the American Federation of Labor did not exist. This lack of support was undoubtedly one major reason for the failure of the attempt to secure the new contract. The absence of universal support from those actually or potentially members of Equity doubtless was another major cause of failure. The existence of an aroused national public sympathy was extremely doubtful also, and this fact, combined with the lack of trade union support, left Equity to fight its external as well as its internal battles alone—a contest apparently too one-sided for it to succeed.

The strategy of the Association of Motion Picture Producers in refusing in any way to recognize Equity was not wise, although confidence in the strength of its position was evidently justified. At the time Equity first presented its demands, however, the real strength of the latter organization was not known. It was equally uncertain perhaps as to what the attitude of other unions would be and as to the character and success of the propaganda for arousing the sympathy of the general public. Therefore, even if the Association of Motion Picture Producers had its mind fully made up to resist any demands that might be made upon it and was confident of its success, its position before the public at large would have been far stronger if it at least had made an attempt at frank discussion instead of assuming the appearance of a dictatorial attitude toward labor. This was particularly true since the industry had been given a great deal of unfavorable publicity as a result of legal attacks made upon it by the Federal Government and the far reaching criticism on the part of persons dissatisfied with the quality of pictures offered to the public. Under the circumstances, it could ill afford to invite additional widespread criticism, even if unfounded.

Subsequent to the period covered by the case, the Standard Contract was substantially revised as a result of a series of conferences held between the Academy of Motion Picture Arts and Sciences and the Association of Motion Picture Producers. One notable revision was that providing for a twelve-hour rest period for all players. Further, the standard day was made eight hours with an allowance for overtime. Definite provision was also made for the settlement of disputes arising under the contract by five members from the actors' branch of the Academy. These changes were made effective early in 1930.

March, 1930 H. T. L.

Anne Nichols *v.* Universal Pictures Corporation[1]

PRODUCER—MOTION PICTURES

Copyright Infringement—*Form and not Substance the Essence of Copyright Protection.* An author and copyright owner of a play sued a motion picture producer for damages resulting from an alleged infringement of the author's work. The allegation was that the basic ideas in the author's play had been taken over without permission by the motion picture producer. Stating that the law of copyright was held to give protection only to the word arrangement and to subject treatment, but not to the ideas used by an author, the court held there was no infringement and dismissed the complaint.

(1929)

In May, 1929, Anne Nichols, author and copyright owner of the play "Abie's Irish Rose," sued the Universal Pictures Corporation, alleging that her copyright had been infringed by the defendants in their production and distribution of the motion picture entitled "The Cohens and Kellys." The play "Abie's Irish Rose" had been produced on the American stage in March, 1922, and thereafter it enjoyed a continuous five-year run in New York City. In other cities it was still being shown in 1929. In March, 1926, the defendants produced and ever since had been distributing, the motion picture "The Cohens and Kellys" which they claimed to have made from the play "Two Blocks Away," written by Aaron Hoffman and produced several years previously by Charles B. Dillingham. On January 10, 1927, the complainant granted to the Famous Players-Lasky Corporation the motion picture rights to "Abie's Irish Rose."

The following is a synopsis of "Abie's Irish Rose," as presented by the court:

Solomon Levy, a merchant of New York City, is an Orthodox Jew, with deep religious objections to marriage outside of the Jewish faith, and has a son, Abie, who, while serving in the army in France, met and fell in love with Rosemary Murphy, an Irish Catholic girl, and upon their return to America they are secretly married by a Methodist minister, as Abie is aware of his father's deep objections to his marrying

[1] Adapted from *Nichols* v. *Universal Pictures Corporation, et al.*, 34 Fed. (2d) 145. District Court, S. D. New York, May 14, 1929.

outside of the Jewish faith, and Rosemary also knows that her father would resent her marrying other than a Catholic. After the marriage Abie takes her to Solomon Levy's home and presents Rosemary to his father as an Orthodox Jewess friend under the name of Rosemary Murpheski, with the hope that she will win his father's affection before he may learn that she is not a Jewess. The scheme is successful, and the father is so attracted by her that, actuated by his ardent desire to have Abie, his only son, happily married and his own wish for progeny, he expedites the engagement of Abie and Rosemary and arranges an early marriage. Just as the marriage ceremony by a rabbi is completed, Rose's father, Patrick Murphy, appears with his old friend, a Catholic priest. When Murphy realizes the situation, violent altercations take place between Solomon Levy and Patrick Murphy. It appears that the rabbi and the priest are old friends, having served together with the American forces in France during the war, and together they endeavor to reconcile the parents, and while the latter are in another room, the priest, with the connivance of the rabbi, performs a third and Catholic marriage. Both fathers refuse to forgive their child, and are torn between love for their only child and their conception of religious duty and race prejudice. Murphy returns to his home in California; Levy chooses to regard his son as dead. Abie and Rosemary are left to their own resources. A year passes by during which the Jewish and Irish fathers have not seen the young couple, but their love of progeny, notwithstanding their prejudices, causes each of them to visit secretly the home of Abie and Rosemary on Christmas with gifts for a "child" which has been born to the young couple. When they arrive at the home, each discovers the other laden with gifts on a similar errand. The "child" turns out to be twins, one of whom is placed in each of the grandparents' arms by the rabbi and the priest, who had arranged to be present and to aid in the reconciliation, and the reconciliation becomes complete when the sentimental appeal is added that the boy is named after Murphy and the girl Rebecca, recalling to Levy memories of his dead wife.

The reconciliation is the occasion of friendly antics on the part of the Jewish and Irish fathers, indicating that their racial and religious warfare is over, and portrays what Miss Nichols stated was the fundamental idea of the play, "that if a boy and girl love each other nothing in the world counts, neither family, race, nor religion."

There are other characters in the play, but they merely furnish background and the opportunity for pathetic and humorous scenes incidental to the main plot. The idea of religious tolerance is expressed frequently throughout the play.

The following is the court's digest of the scenario of "The Cohens and Kellys:"

Nathan Cohen, a Jew, conducts a small dry goods shop in New York City, and has a daughter Nannie Cohen, for whom he has an

intense love. Across the hallway, in the tenement where the Cohens reside, is the Kelly family. Kelly is an Irish policeman, and with him lives his son Terry, who is in love with Nannie, although between the families there is a long-standing and violent family feud, and the Kelly family, with the exception of Terry, are continually seeking encounters with the Cohen family and infuriating them. The Kellys and the Cohens are each violently opposed to the friendship and marriage of Terry and Nannie.

Cohen is on the verge of bankruptcy when a strange lawyer informs him that through the death of a relative he has fallen heir to $2,000,000. As a result of this the Cohen family moves into a pretentious residence in a fashionable neighborhood, and Cohen's idea is that he and his family will shun their old "East Side" friends and that Nannie shall not see Terry any more. But Terry and Nannie continue to meet, for they had already been secretly married. Upon Cohen's return from a trip to Florida, he finds that Nannie has given birth to a baby boy, and when he is informed by his wife that Terry and Nannie had been married, and that this is their child, he refuses to acknowledge or have anything to do with his son-in-law, whom he charges with marrying Nannie to get his money. Cohen's wife begs him to forgive them, but he will not. Kelly determines that he and his boy and family shall visit the Cohens to see the baby, as well as Nannie. This visit ends in a quarrel and fighting, and Cohen orders the Kelly family to leave his house. Nannie declares her allegiance to her husband, and leaves with her baby, and goes to the Kelly flat. They are shortly afterwards followed by Mrs. Cohen, who finds that Cohen will not listen to her plea for a reconciliation. She tells Cohen that his "blood is whitewashed with money."

While Cohen is home despondent, the lawyer returns and informs him that he has just discovered that the $2,000,000 which Cohen received belongs, not to Cohen, but to Kelly, who it appears was the nearest relative of Sadie Greenbaum, who left the fortune, but that if Cohen will divide with him, he will keep it quiet. Cohen, whose sense of honor is awakened, declines to enter into any such agreement or to keep the money, and hurries through the rain to the Kelly flat to announce the truth to Kelly. There he finds his family and young grandchild with the Kellys. He confesses that he has been a "stubborn old fool" and is about to depart, an abject and humiliated, broken man, when Kelly reminds him of the grandchild, and through the pacifying influence of their respective wives Kelly takes Cohen by the hand and calls him by his given name; both give way to tears, and Kelly places the grandchild in Cohen's arms. There is a general reconciliation and Kelly offers to share the inheritance with Cohen and to enter into the partnership with him, and the picture ends with a hilarious discussion of their future plans over a bottle of wine.

Counsel for the complainant sought to show infringement by what seemed to be a new test, or at least a new manner of approach.

This method consisted of the segregation of the scenes of the play and of the picture, and the extraction of the ideas or emotions forming the collocation of the play and a comparison of them with the ideas or emotions of the picture under consideration, the theory being that if these were similar, the underlying ideas, the emotional themes, the basic characters, and "the crucible" must be similar, and hence the infringement followed.

In presenting an opinion the court said the following in part:

> The law relating to infringement and plagiarism is quite well settled. But in some instances the practical application of it is not simple, because of the difficulty of determining what the precise points of similarity or dissimilarity between two dramatic or other compositions are. Mere ideas are not protected, but the manner of expressing the same ideas may be secured, and the line differentiating the idea from the expression of the idea is not always clearly defined.
>
> The theoretical test presented by the counsel for the complainant does not meet the full requirements of a correct test. It is not sufficient. That two productions display the same trend of emotions is not enough to show plagiarism. Emotions, like mere ideas, are not subject to preemption; they are common property. It is the incidents or elements, or grouping of them, which produce the emotions that are to be compared. Similar emotions may be caused by very different ideas. It is obvious that the underlying emotions reflected by the principal characters in a play or book may be similar, and yet that the characters and expression of the same emotions be different. While it is true that a sequence of like events will awaken in the average person like emotions, it does not follow that it may be correctly deduced that like emotions were produced by the same events, or substantially identical episodes.
>
> That the same emotions are found in plays would not alone be sufficient to prove infringement, but, if similar emotions are portrayed by a sequence of events presented in like manner, expression, and form, then infringement would be apparent. Also, for instance, no one has an exclusive right to an idea or statement of the law that a mere idea or fact may not be copyrighted, but that the manner of expressing or illustrating the idea or fact may be protected by copyright.

The court cited the following cases to indicate that form and not substance is protected by copyright:

> In *International News Service* v. *Associated Press*, 248 U. S. 215, at page 254, 39 S. Ct. 68, 78 (63 L. Ed. 211, 2 A. L. R. 293), Mr. Justice Brandeis, in the opinion of the court stated:
>
> At common law, as under the copyright acts, the element in intellectual productions which secures such protection is not the

knowledge, truths, ideas, or emotions which the composition expresses, but the form or sequence in which they are expressed; that is, some "new collocation of visible or audible points—of lines, colors, sounds, or words."

In *Dymow* v. *Bolton*, 11 F. (2d) 690, at page 692, Judge Hough, speaking for the Circuit Court of Appeals, stated:

> . . . The copyright, like all statutes, is made for plain people; and that copying which is infringement must be something "which ordinary observation would cause to be recognized as having been taken from" the work of another. *King Syndicate* v. *Fleischer*, (C. C. A.) 299 F. 533.

He rejects the theory of dissection rather than observation to discern resemblances in plays. Judge Hough further states:

> If one compares two dramatic compositions, whether in forms suitable for the stage or for the library, what has been called the "fundamental plot," the "same old plot," or an "old story" can assume any author's dressing or adornment; that author can devise and use his own way of expressing that plot, and he will not infringe . . . If the appropriation complained of is of the "combination or series of dramatic events apart from the dialogue which makes up" a particular scene, reference may be had to *Daly* v. *Webster*, 56 F. 483, 4 C. C. A. 10; *Dam* v. *Kirk* [La Shelle] Co., 175 F. 902, 99 C. C. A. 392, 41 L. R. A. (N. S.) 1002, 20 Ann. Cas. 1173; *Chappell* v. *Fields*, 210 F. 864, 127 C. C. A. 448. And it will be quite plain that no mere plot or so-called theme was protected by these decisions. They assert the legal proposition that there may be dramatic composition in the invention and arrangement of a series of events although the "dialogue (coincident with the events) is unimportant and as a work of art trivial."

The following cases were cited to indicate that copyright extends only to word arrangement:

See, also, *Frankel* v. *Irwin* (D. C.) 34 F. (2d) 142, for opinion of Judge Hough, wherein he states:

> Infringement of a work of imagination is determined by the result of comparative reading on the imagination of the reader, not by a dissection of sentences and incidents, suitable for the study of a digest or textbook.

In *Eichel* v. *Marcin*, 241 F. 404, Judge Manton held that the play "Cheating Cheaters" did not infringe on the play "Wedding Presents," although there were many resemblances between the two, but that there was no copying from plaintiff's play of any plot, scene, dialogue, sentiment, or character, aside from the general features and subjects, which were open to common use, and stated at page 408:

> The object of copyright is to promote science and the useful arts. If an author, by originating a new arrangement and form of expression of certain ideas or conceptions, could withdraw these ideas or conceptions from the stock of materials to be used by other authors, each copyright would narrow the field of thought open for development and exploitation, and science, poetry, narrative and dramatic fiction and other branches of literature would be hindered by copyright, instead of being promoted. A poem consists of words, expressing conceptions of words or lines of thought; but copyright in the poem gives no monopoly in the separate words, or in the ideas, conception, or facts expressed or described by the words. A copyright extends only to the arrangement of the words. A copyright does not give a monopoly in any incident in a play. Other authors have a right to exploit the facts, experiences, field of thought, and general ideas, provided they do not substantially copy a concrete form, in which the circumstances and ideas have been developed, arranged, and put into shape. *Holmes* v. *Hurst*, 174 U. S. 82, 19 S. Ct. 606, 43 L. Ed. 904.

The following cases were cited to indicate that copying of an idea is not an infringement.

And he (Judge Manton) referred to the following statement of Lord Blackburn in *Chatterton* v. *Cave*, 3 App. Cas. 483, which seems particularly pertinent to the case at bar:

> An idea may be taken from a drama and used in forming another, without the representation of the second being a representation of any part of the first. For example, I have no doubt that Sheridan, in composing "The Critic" took the idea from "The Rehearsal"; but I think it would be an abuse of language to say that those who represent "The Critic" represent "The Rehearsal" or any part thereof; and if it were left to me to find the fact, I should, without hesitation, find that they did not.

In *Daly* v. *Webster*, 56 F. 483, at page 487, the Circuit Court of Appeals of this Circuit stated:

> . . . Where various incidents, in themselves common literary property, are grouped to form a particular story, must be confined, in his claim to copyright, closely to the story he has thus composed, and that another author, who, by materially varying the incidents, materially changes the story, should not be held an infringer.
>
> It is true that an old plot could not be copyrighted, and this plot is old, but a new treatment of an old plot may be protected by copyright . . . Probably almost every conceivable plot has been the subject of many books. However, people will continue to write books, and the public continue to read them, because of the new characters and settings with which the authors surround an

> old plot, and such of them as are the independent productions of the authors may be copyrighted . . . It is not the subject that is protected by copyright; it is the treatment of the subject that is protected.

The court then reverted to a discussion of the case at hand, continuing as follows:

> After viewing the complainant's play, "Abie's Irish Rose," and a motion picture of "Abie's Irish Rose," and the defendants' motion picture, "The Cohens and Kellys," with the love scenes between Terry and Nannie deleted, my observation leads me to the conclusion that "The Cohens and Kellys" differs quite substantially in its themes, scenes, episodes, and expression of ideas, although both make use of common property, such as Jewish and Irish characters, marriage meeting with strong parental opposition, and final reconciliation. "Abie's Irish Rose" presents the conventional situation of the Jewish boy and the Irish Catholic girl in love with each other, meeting with opposition by the parents of both because of their strong religious prejudices . . .
>
> In "The Cohens and Kellys" the subject of religion is completely absent. Kelly's "three ideals" are expressed as being "his family, Tammany Hall, and corned beef."
>
> . . . . .
>
> . . . I should describe the "theme" of "Abie's Irish Rose" as that of love of a father for his child and a father's desire for progeny overcoming his religious prejudice, and the "theme" of "The Cohens and Kellys" as materialism overcome by integrity.
>
> The fundamental plot in "Abie's Irish Rose" is not new and is common property in the "public domain." The theme of the secret marriage, meeting parental opposition because of prejudice, racial or otherwise, with an Irish-Jewish background, is not new. A similar idea is found in a number of plays, including "Joseph Lewis & Son," copyrighted in 1890, where the father, an orthodox Jew, also has a son whom he wishes to take into his business, and whose predominating ambition is to have his son marry an orthodox Jewess, but who does marry a Gentile, and parental opposition is finally overcome by his love of progeny. "Krousemeyer's Alley" presents an Irishman and his son, and a Jew and his daughter, and the marriage of the girl and boy. Originally it was a German family and an Irish family, but during the war the German family was represented as a Jewish family. There is a strong opposition to the marriage on the part of both parents, because of their racial antipathy. Eventually there is a reconciliation upon the christening of a child which has been born to the young couple. "The Rabbi and the Priest," also known as "The Little Brother," was produced in 1918. The scenes in this play are laid in New York's East Side, and the father of the girl, Judith, is, like Solomon Levy, a widower deeply attached to his only child, and strongly

opposed to his daughter marrying anyone but an orthodox Jew; but she falls in love with a devout young Catholic, they are married, each is disowned by their parents, but are subsequently reconciled after the birth of children.

Many of the ideas in these plays and in others, which have been examined, but which are unnecessary to refer to, are similar to those found in "Abie's Irish Rose." Undoubtedly, however, the very great success which "Abie's Irish Rose" has achieved is due, not to the mere plot of the play, but to the author's genius in the manner in which she has presented the plot or theme to the theater-going public, and that her play had particular attraction and appeal is quite convincingly demonstrated by its very wide popularity and by the financial returns derived from "Abie's Irish Rose."

The record discloses that in 1925 the defendant, the Universal Pictures Corporation, tried to purchase "Abie's Irish Rose" motion picture rights, and that, when the scenario of "The Cohens and Kellys" was being written, its authors "studied" the synopsis of "Abie's Irish Rose"; also that the *Universal Weekly*, a publication issued by the Universal Pictures Corporation, announced on the completion of its picture that its photoplay would be to the screen what "Abie's Irish Rose" was to the stage, and, while there is a fairly strong inference that the authors of "The Cohens and Kellys" gained some of their ideas from "Abie's Irish Rose," for the reasons discussed above, my conclusion is that such rights of the complainant as are protected by copyright have not been infringed; therefore that the bill of complaint should be dismissed, and accordingly a decree to that effect may be entered upon notice.

COMMENTARY: The decision of the court in this particular case is not a primary consideration, although the doctrine as explained by the court seems to be in accord with the present law which is based upon the copyright law of 1909. Although a great number of decisions have been rendered as interpreting this act, each case of infringement must be settled on its own individual merits.

The necessity of protecting himself against charges of infringement is one recognized by every motion picture producer. Great care needs to be exercised to protect himself against charges of infringement, not only in the use of plots, but in the use of titles as well. With the introduction of talking pictures the problem has become increasingly serious, and the costs of defense against charges of infringement are in the aggregate very high. The case under consideration involved a claim for damages amounting to $3,000,000, and it is understood that the costs of defense against the suit amounted to $50,000. It thus appears that, even when successful, a producer must reckon with the expense of protecting himself against suits of this nature. The situation is more serious because, in addition to many sincere suits honestly brought, of which the present instance is doubtless one, there are a

great number of suits brought with motives which are at least tinged with criminal intent. Practically every important producer is confronted with this problem at one time or another. Thus, Cecil DeMille was faced by such a situation in the production of "The King of Kings" and "The Ten Commandments." Under the present conditions motion picture producers generally refuse to negotiate for any stage play that is in any manner involved with either an actual suit or a threat of a suit.

It has been suggested that some improvement in the wording of the law governing infringement would be desirable. It is difficult, however, to word a statute so as to cover the fine shades of meaning which are necessarily involved in many of the cases of the type under consideration. A more fruitful suggestion, perhaps, has been that wherever possible such differences be settled by arbitration. Unfortunately, such a procedure is not always applicable or acceptable. Still another suggestion is that the English practice be followed which provides that a complainant must satisfy a representative of the court that he has real grounds for action before being permitted actually to institute a suit, and that he be required to post a bond in those cases where suit is brought, in order to reimburse the defendant for the expenses of the trial in the event infringement is not proven. On the whole, it would appear that this final proposal has much merit, although something may also be done to supplement such procedure in accord with the other suggestions mentioned.

November, 1929 H. T. L.

Federal Trade Commission *v.* Famous Players-Lasky Corporation, *et al.*

PRODUCER AND DISTRIBUTOR—MOTION PICTURES

Leasing—*Block Booking as Eliminating Competition.*—An action was brought before the Federal Trade Commission against a motion picture distributor which sold its pictures in groups, under a method commonly called "block booking." Evidence was submitted to show that this method of selling tended to restrict competition. The commission ordered the defendant to refrain from selling in blocks only, and to desist from charging prices for individual pictures which practically required an exhibitor to purchase the entire group of pictures or none.

(1923–1928)

In 1923, complaints brought by many motion picture exhibitors against the practice of block booking by distributors of motion pictures culminated in an action before the Federal Trade Commission against the Famous Players-Lasky Corporation. Most large distributors were allied with producers and distributed only the pictures of the producer with which they were allied. The principal charges of the Federal Trade Commission's action against the Famous Players-Lasky Corporation were directed against the methods by which the corporation was seeking to restrain competition. The methods under attack included the acquisition and control of theaters and other alleged unfair practices. Among these was the practice of block booking.

Block booking was the simultaneous sale to an exhibitor of a number of motion pictures for release and delivery to the exhibitor over a period of time, the pictures being offered as a group and the aggregate price being in part dependent on the quantity taken. If an exhibitor accepted an entire block as offered, the price generally was lower per picture than if he selected a smaller number of the pictures included in the block. Some distributors had been accused of offering their blocks of pictures on an "all or none" basis, or, in other words, of refusing to sell to an exhibitor any pictures unless he bought the entire block as offered.

Block booking was attacked on the grounds that it limited the exhibitor's choice, often forcing him to take pictures he did not

want; that it assured the distributor an income on all pictures regardless of their quality; that it caused overbuying on the part of exhibitors; that it enabled a distributor to usurp the playing time of exhibitors to the exclusion of other distributors; and that it had other harmful effects. In the course of its investigation the Federal Trade Commission conducted extended hearings to determine whether or not block booking should be ordered stopped as an unfair trade practice.

While the investigation of the Federal Trade Commission was in progress, Senator Smith W. Brookhart of Iowa, in an effort to hasten the settlement of the block booking problem, introduced into the United States Senate an anti-block booking bill (Senate bill 1667, Seventieth Congress, First session) which provided with regard to block booking that ". . . it shall be unlawful . . . to lease or offer for lease for exhibition in any theater or theaters, copyrighted motion-picture films in a block or group of two or more films at a designated lump-sum price for the entire block or group only, and to require the exhibitor to lease all such films or permit him to lease none; or to lease or offer for lease for exhibition such motion picture films in a block or group of two or more at a designated lump-sum price for the entire block or group and at separate and several prices for separate and several films; or for a number or numbers thereof less than the total number, which total or lump-sum price and separate and several prices shall bear to each other such relation as to operate as an unreasonable restraint upon the freedom of an exhibitor to select and lease for use and exhibition only such film or films of such block or group as he may desire and prefer to procure for exhibition . . . " Certain testimonies at the hearing on this bill before the Interstate Commerce Committee of the Senate are presented in this case because they explain more fully the attitude of some exhibitors toward block booking than did some of the testimonies before the Federal Trade Commission in its case against the Famous Players-Lasky Corporation.

Except for the United Artists Corporation, virtually all large distributors and most smaller distributors practiced block booking. The distributors who handled only five or six pictures per year, however, seldom sold in that manner. Several different types of block booking were in use.

The actual practice varied somewhat as between the different distributors. The Famous Players-Lasky Corporation each year, as soon as its program was announced in the spring, sent its salesmen into the field to sell its pictures to the exhibitors in groups or blocks. In its brief the company stated: "These blocks vary from 10 to more than 40 in one block; Famous Players-Lasky Corporation has never had more than 40 in one block. Its average number per block since 1920 has been about 25. It has never offered less than two blocks per year and in some years as many as four blocks." It was the goal of every salesman as far as possible to sell each block in its entirety to each exhibitor in his territory. The salesmen were instructed, however, whenever they found it impossible to sell to an exhibitor a block as offered, to try to sell him one containing a smaller number of pictures. The salesmen's instructions permitted them, when selling an exhibitor an entire block as offered, to accept a lower price per picture than would be acceptable when selling a corresponding exhibitor a smaller number of pictures.

Motion pictures were not sold at any standard price. The price on each picture was the result of a process of bargaining between the distributor and the exhibitor, and varied according to the number of seats in the exhibitor's theater, the type and location of the theater, the value of its competition, the protection required over other theaters, the reputation of the theater, etc. It was said[1] that in the progress of negotiations with an exhibitor the distributor's salesman frequently tried to compel a sale of the entire block by making the statement that if the exhibitor did not buy all of a block he would not be permitted to buy any, but that unless the salesman was able to dispose of the entire block to a competitive theater he always was willing to sell such individual pictures as the exhibitor might select.

Mr. Sidney Kent, general sales manager of the Famous Players-Lasky Corporation, testifying before the Federal Trade Commission,[2] said:

> The element of compulsion in block booking is bound up to the degree of salesmanship, quality sales effort, that you can bring upon an exhibitor to get him to buy, as a matter of negotiation, the

[1] *Federal Trade Commission* v. *Famous Players-Lasky Corporation*, record of testimony, pages 17384–17393.

[2] Record of testimony, pages 17411–17420.

greatest percentage possible of your output, and everybody tries for that strenuously.

Q. And the degrees of effort put forward vary without limit, do they not?

A. Yes, I think that is true.

Q. And so far as Famous Players is concerned, does it ever stand pat and refuse to sell an exhibitor who does not want to take the entire block?

A. Not to my knowledge.

In the same way the Universal Pictures Corporation, another large distributor, sold most of its feature pictures in blocks. It also had a special service particularly designed for smaller exhibitors, known as the Universal Complete Service Plan,[3] which was a type of block booking. Subscribers to this service were entitled to receive each week during the period of the subscription a complete program composed of a feature picture and the necessary short pictures, all to be selected by the exhibitor from the pictures released by the Universal Pictures Corporation. A few of the very best pictures each year were excluded from this service. The International Newsreel, which was distributed by the Universal Pictures Corporation for the International Newsreel Corporation, was not included in the service.

Another large distributor of motion pictures, First National Pictures, Incorporated, practiced another method of block booking. This company had been organized as a cooperative buying association in 1917 by a group of 28 exhibitors who were dissatisfied with the kind of pictures then being offered by the producers. Later it had started producing its own pictures. The original 28 exhibitors and those who subsequently joined the company signed contracts whereby First National Pictures, Incorporated, licensed and required these exhibitors to show all the pictures which the company itself might produce.

Educational Pictures, Incorporated, a large company which released only short pictures such as comedies and newsreels, advertised and released its pictures by series without giving emphasis to the individual pictures. Its productions were usually listed, for example, as "10 Charlie Bower Comedies, 8 cartoons, 10 Lupino Lane Comedies," etc. Its salesmen attempted to sell as many series as possible in a block to each exhibitor. As regards its newsreels, Educational Pictures, Incorporated, like

[3] See Universal Pictures Corporation, page 273.

other producers of newsreels, sold a service calling for two issues per week for one year. The reels of news films never were sold individually. Other producers of short films released their productions in the same way.

The United Artists Corporation was the only large distributor of motion pictures that did not sell its pictures in blocks.[4] It never had produced a large number of pictures in any one year, although there had been a tendency for the number to increase. These were generally conceded to be comparable to the best pictures of the other companies. It sold them individually as high-class productions "on their merits." Other distributing companies held the opinion that this method, which doubtless was effective in selling a few high-class pictures, would not prove practicable in selling a large number of pictures.

The practice of selling pictures in blocks had been common among distributors since about 1920. The Famous Players-Lasky Corporation, in its brief in reply to the Federal Trade Commission, outlined the historical basis of block booking as follows:[5]

> The practice of block booking, in its essential substance, has been rooted in the industry since its inception. The practice is directly evolved from the old service idea, under which entire programs were furnished to exhibitors, and which is frequently referred to as the "program" system . . .
>
> At the beginning of the motion picture business the sporadic motion picture films were exchanged by exhibitors among themselves. Gradually they established offices called "exchanges" and went into the business of distributing motion pictures as a regular service as a side line to their exhibition interests. Definite methods of marketing, however, did not emerge until the entry of the producers into the field of distribution.
>
> In those early days the output of the producers consisted of but single reel subjects. Since the average exhibitor exhibited at least three reels at each performance and since he changed programs daily, he required a large number of pictures during the course of the year. These pictures were licensed to exhibitors under the "service" idea, or "program" system, by virtue of which an exhibitor would purchase the right to use a certain number of reels per day, constituting his entire program, for an indefinite time in the future at a flat rate per foot of film. The "service" system took no account of individual

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[4] See United Artists Corporation, page 281.

[5] Brief on behalf of Famous Players-Lasky Corporation in answer to supplemental brief for the Federal Trade Commission—Docket 835.

pictures or of individual actors or directors and the flat rate per foot applied without regard to the number of separate pictures furnished, the quality or character of the pictures, the size of the theater or of the town or city in which it was located and regardless of whether the particular exhibition was a first or subsequent run.

. . . The system was at first known as the lock booking system. Shortly after the formation of General Film Company prices for pictures were divided into three classes, (1) for films shown 1 to 10 days after their release date, (2) for films shown 10 to 30 days after their release date, and (3) for films shown 30 to 60 days after their release date. It was customary for exhibitors to contract for a supply sufficient to consume all the exhibition time of their theaters for the entire week for an indefinite period in the future.

What the distributors sold and what the exhibitors wanted was a service, that is, a constant supply of two or three reels of motion picture film furnished two or three or more times per week . . .

While some exhibitors preferred the service rendered by the General Film Company to that of the Universal or Motion Picture Distributing Sales Company, it never occurred to them to use some of the pictures furnished by one service and some of the pictures furnished by the other. Of course an exhibitor changing his program frequently might arrange with one company for service on certain days of the week, and with another company for service on other days. To say that this method constituted an illegal sales method and was a method of restrictive and tying contracts is to forget entirely that the distributing companies of that early day were not licensing individual pictures for exhibition but were selling a film service.

That the service character of motion picture distribution persisted at least until 1917, is shown by the following price schedule for Paramount pictures in effect between 1914 and the fall of 1917:

SCHEDULE OF PRICES FOR PARAMOUNT PICTURES

Price per Picture

Population Towns of	1 Day	2 Days	3 Days	One Week	
5,000	$25.00	Advance 20% for two days	Advance 30% for three days	1 picture double 3 days' price	2 pictures double one picture price
6,000	27.50				
7,000	30.00				
8,000	32.50				
9,000	35.00	....	....	"	
10,000	37.50	....	....	"	
				"	

As the industry progressed to the point where it was realized that it was possible for different pictures to be of differing qualities, dis-

tribution methods underwent a change . . . The recognition that these pictures as individual entities differed in quality came about principally because of the tremendous importance which was attached to the presence of a certain star in a given motion picture . . .

This shift in public taste to star worship resulted in a modification of the then current methods of distribution. While distributors still continued to offer large numbers of pictures at one time to exhibitors, the pictures so offered were subdivided into series of seven or eight, in each of which one particular star was featured. Under this system the emphasis was transferred from the program as a whole to star series. The names of the particular pictures were still of no importance and the pictures were not sold by name but merely by the series or blocks in which the same star appeared. As already explained, the exhibitor bought, for example, 6 Pickfords, 6 Harts, or 6 Clarks. It was the universal custom of the trade for exhibitors to take all of the pictures in a star series and distributors not only required exhibitors to buy all of the pictures in a star series but tried to get them to buy all of the star series which were offered at the same time.

The star series method of licensing the exhibition of motion pictures was generally adopted by the trade between the years 1917 and 1919. It did not, however, persist because it rapidly resulted in increased production costs because the emphasis placed upon the particular stars caused the stars to develop such ideas of their popularity that they demanded increases in salary which the producers thought excessive. The star series system was gradually abandoned and about 1920 or 1921 the then existing methods of selling motion pictures were almost completely replaced by the present generally used method of block booking, that is, the offering at one time of a "block" composed of a number of pictures to be released over a period of time.

Some of the distributors had tried other methods of selling and all distributors had considered them; but, with a few exceptions such as the United Artists Corporation's plan, no plan had been worked out which, in the minds of distributors, met the needs of the situation as well as block booking.

In defense of block booking distributors testifying before the Federal Trade Commission advanced five distinct arguments: (1) it was simply wholesaling applied to the sale of motion pictures just as wholesaling was applied in the sale of ordinary commodities; (2) it reduced the cost of distribution, thus benefiting the distributors and, in turn, the exhibitors; (3) it simplified the buying problem of exhibitors by making it possible to obtain a year's supply of pictures in a few large purchases; (4) it assured a producer a definite income which enabled him to make better pictures than he otherwise could have made; and (5) it had been found more

successful than any other method that had been developed by any distributing company.

Several distributors testified that the selling of pictures in blocks was simply a wholesale type of selling as opposed to the alternative method of selling each picture individually. Although the different pictures were not precisely similar to each other as were the different units of most commodities, it was claimed that block booking had the characteristics of wholesaling in that it involved the sale of quantities of pictures at lower prices per picture than they would be sold for individually.

The distributors maintained that block booking, by increasing the size of the average order from each exhibitor, enabled them to send salesmen to the smallest exhibitors. The block purchases of even the smallest exhibitors were sufficiently large to warrant the necessary sales expense. Furthermore, it was demonstrated that if pictures were sold individually and a salesman sent to an exhibitor each time a new picture was released, the selling expense in the case of the small rural theaters would be more than the rentals received. Many small rural theaters paid as little as \$7.50 per week for features. Without block booking distributors would have been reluctant to serve such theaters. The statement was made by an executive of a large distributing company that it cost at least \$10 to make a call on a theater.

Mr. C. C. Pettijohn, general counsel for the Motion Picture Producers and Distributors of America, Incorporated, an association of which the Famous Players-Lasky Corporation was a member, said at the hearing on the Brookhart bill:[6]

> A further effect of abolishing this sales system would be to increase the price of the pictures. It is elementary to say that one can wholesale his product cheaper than retail it.
>
> A distributor can make a better price on a group or block of pictures than on one or two, as the sales cost is thereby diminished. The selling of motion pictures, one at a time, at prices like \$7.50, \$10, and \$12.50, for feature pictures, cannot be continued if this bill becomes law. The traveling expenses of a salesman alone, to a theater 50 miles from an exchange center, would be greater than any rental to be gained from the account. Over 5,000 of the 20,303 theaters are located in towns with a population of 2,500 or less. These theaters rent complete picture programs for as low as \$5 a night, because by contracting for their programs in groups the selling costs of the distribution are so low

[6] Report of hearing on Brookhart bill, page 183.

that the pictures can be rented at this minimum figure. If the distributor had to sell each one of these small theaters each picture separately, the distribution cost would rise to at least $25 per picture or program, and in some cases it would reach $50. The producers and /or distributors being compelled to sell their pictures separately, with a resulting large increase in cost of distribution, would have to increase the prices of their pictures, and the exhibitors having to pay more for their pictures would have to increase their admission prices which the public, as is always the case, would have to pay. But when these admission prices are so greatly increased that they will become prohibitive—and that is what will occur—the public will refuse to go to the theaters and thousands of owners of the smaller theaters in the cities and towns throughout the country will be forced out of business. In my opinion one of the effects of this bill will be to eliminate automatically one-fifth of the motion picture theaters from the industry, and I submit that the abolition of the right of these distributors to wholesale their product and the imposition of these price-fixing provisions would be an unwarrantable interference with private business.

It was also maintained that block booking simplified the exhibitor's buying problem and enabled him to book an entire year's program in advance. Mr. Felix Feist,[7] general sales manager of the Fox Films Corporation, testified that an exhibitor buying in blocks could ascertain early in the season just what his program for the season would be. Since he would know what stars especially popular with the public were to appear on his screen and when they were to appear, he would have the opportunity to arrange his program most effectively. Mr. Feist maintained that if the exhibitor bought pictures individually he would not know in advance what his program would be.

That block booking guaranteed a definite income on all pictures was conceded to be of advantage to producers and distributors, who thereby were enabled to stabilize their programs. But many distributors maintained that it also benefited exhibitors. Producers operating under these conditions would find it possible, having a definite minimum income with which to work, to make pictures of higher average quality than they would if they had no assured income. While some pictures undoubtedly would fall below the level of standard of the group, distributors maintained that these pictures probably would be fewer in number under this system than under any other.

[7] *Federal Trade Commission* v. *Famous Players-Lasky Corporation, et al.* Record of testimony, pages 17384–17393.

On this particular point Mr. Felix Feist testified that in his opinion block booking was the only economical method of selling motion pictures that had been devised. Like wholesale selling it enabled the distributor to sell a number of pictures in one group at a much lower price than would have to be charged per picture if the pictures were sold individually. In actual practice a distributor would sell an entire block at a lower price per picture than he would charge for a few pictures from a block. This difference in price represented the additional expense of making individual sales. "From the producer's point of view, if you could not set up your program so you could produce a number of pictures, the price would go way up out of reason" to a point the exhibitor could not afford to pay.

Mr. R. H. Cochrane, vice president of the Universal Pictures Corporation, testified that his company offered to exhibitors in one block the pictures which the company expected to release during the year. In this manner the company's salesmen were able to sell the entire year's program of pictures at one call. He testified that he considered this method of selling comparable to wholesaling in other trades and that those exhibitors who bought the entire block were given the benefit of a wholesale price. The price per picture became higher and higher to those exhibitors who took fewer and fewer pictures. Mr. Cochrane further stated that, as practiced, block booking did not imply any element of compulsion; all salesmen exerted all possible efforts to effect a sale of the entire year's program of pictures with every exhibitor, and the final result depended upon the bargaining ability of the parties to the negotiation.

Mr. Cochrane testified that his company had tried to sell pictures individually but that this method " . . . ran up sales cost to such an extent that we simply could not go on with it. We had to charge so much for the pictures in order to cover the sales cost on the repeated trips of the salesmen to every exhibitor, and we had to go into block booking to get anything at all. The only place where we do that (sell individually) now is on what we call superfeatures—a picture that is big enough to justify a salesman on that particular picture." Mr. Cochrane said that the Universal Pictures Corporation produced from two to five superfeatures each year.

The Famous Players-Lasky Corporation stated that it had made two attempts since it adopted block booking to sell pictures individually but that both attempts had been unsuccessful. In its reply brief the respondent said:

> In 1919 Famous Players-Lasky Corporation sought to put into effect a more selective method of selling pictures than the then existing star series system. The plan resulted in tremendously increased selling costs necessitating increased prices to exhibitors (about which much has been said by Commission's counsel in this proceeding) and exhibitors would not support the policy. It had to be abandoned.
>
> Again, in 1923, after the taking of testimony in this proceeding was well on its way, Famous Players-Lasky Corporation, thinking that the exhibitors were perhaps then ready for a purely selective method, endeavored to get wholly away from any offering of pictures in blocks and offered its product a picture at a time as released. Again the exhibitors would not have it. The task of selling pictures singly necessitated more salesmen and more frequent visits to exhibitors. Where a salesman formerly sold an exhibitor a large block of pictures for three months at a time, the new plan required a call for each picture or each two or three pictures. Adequately to cover the territory the salesforce had to be multiplied by four. Sales costs were multiplied by two. Work in the contract departments of the exchanges was doubled and the paper work in every department greatly increased. Had the plan been continued it was estimated that prices would have had to be increased at least 40% in order to avoid actual loss. Exhibitors complained bitterly of their inability to be assured of a quantity of Paramount pictures for their future needs and objected strenuously to being required to bid competitively for each individual picture. So bitter were they that large numbers of Famous Players-Lasky Corporation's best customers purchased the product of competing companies in block and left no time on their programs for Paramount pictures. The strictly unit policy of selling, therefore, had to be abandoned.

The fact that the practice of block booking was general in the industry some 20 distributors considered to speak favorably for its fairness. Also several exhibitors testified that in their opinion the practice of block booking was beneficial to exhibitors as well as to producers and distributors. They admitted the truth of the distributors' contention that individual selling would so increase the cost of distribution that the cost of pictures would be too great to be borne by many of the very small exhibitors.

In its main brief in the action before the Federal Trade Commission, the Famous Players-Lasky Corporation maintained:

> Theaters cannot exist and prosper on a succession of superspecial pictures, each widely exploited and each advertised as the greatest picture made. The rentals which distributors of such pictures are forced to ask require exhibitors to operate their theaters at capacities and prices too great to be consistently maintained. The backbone of the exhibition business is the ordinary program picture, few of superspecial quality, none bad but all of a consistently good average quality. Such pictures cannot profitably be sold or purchased on a strictly individual basis. The producer must be assured in advance of a considerable and continuing income in order to maintain consistent quality production. The most businesslike method of securing this assurance is to offer the program pictures in blocks sufficient in number to distribute widely the risk of occasional failures. From the standpoint of the exhibitor the assurance of a definite supply of pictures upon whose quality he has learned from experience to rely is worth the deprivation of the opportunity of always being able to buy the proven outstanding picture of the week.

The Federal Trade Commission in its action against the Famous Players-Lasky Corporation attacked the whole fundamental structure on which the practice of block booking was founded. It laid emphasis throughout its case on what it claimed was an essential part of the practice of block booking, namely the practice of requiring an exhibitor to purchase either the entire block of pictures as offered or none.

The Commission presented several different arguments against block booking: (1) it maintained that the practice limited the exhibitors' choice of pictures; (2) it offered evidence to prove that block booking was the direct cause of much overbuying on the part of exhibitors; (3) it argued that block booking unduly preempted the playing time of exhibitors, thus limiting the market for competitors' pictures and tending to eliminate competition; (4) it argued that block booking, by combining in the same group pictures of poor quality with those of better quality, forced upon the market many pictures of poor quality which otherwise would not have had a market; and (5) it further maintained that the protected market offered by block booking resulted in the production of too many pictures.

To establish what it denominated the "all or none" feature of the practice of block booking, the Commission called as witnesses

16 exhibitors who testified that they had been forced by the company's salesmen to buy all the pictures offered in a block or to buy none. In its brief the Federal Trade Commission made the following statements.[8]

Numerous witnesses testified that they were compelled to buy all of Paramount pictures or none and that they were not permitted to select those pictures which they desired to buy and which they considered most suitable for their communities and clientele.

. . . The respondents' exchange managers and salesmen who testified in this case, without exception, admitted that when they started out to sell a block of pictures they had a sales-sheet naming each picture that had been released and was ready for the market, and placed opposite each picture was the price demanded, and they tried to sell the entire block to each exhibitor but they say that if the exhibitor does not desire the entire block they permit him to pick out the pictures he wants, and say that when he makes such selection they raise the prices of the pictures he selects from the prices set opposite the pictures on the sales-sheet about 50%, so that if the exhibitor selects two-thirds of the pictures offered they will cost him the same as the entire block. This restrictive condition imposed upon those exhibitors who seek to buy less than all, as testified to by the respondents' own exchange men who absolutely superintend the sale of Famous Players-Lasky Corporation's entire production, together with the positive testimony of the many witnesses for the Commission that they had always been compelled to take the entire product in order to get any part of it, conclusively disproves all of the percentage figures contained in these exhibits that respondents have had their economists preparing for the last two years.

Such restraints imposed upon the exhibitors by the salesmen are for the purpose of compelling him, and do in effect compel him, to buy their entire product in order to get any part of it. These unreasonable restrictions and restraints upon the exhibitors are of the same nature and character and have the same effect as the "tying restrictions" and "restrictive clauses" condemned by Justice Day in *U. S. Shoe Machinery Co.* v. *United States*, (258 U. S. 451). Under section XX we have shown that block booking is not only an unfair method of competition against other producers and distributors but is an outrage on the exhibitors, as well as the public who patronize the picture shows.

In reply the company stated its brief:[9]

If the theory of Commission's counsel were correct that the alleged compulsion exercised by Famous Players-Lasky Corporation consists in disposing of its *entire* block of pictures, and nothing less, to one of two competitors to the exclusion of the other, a statistical examination of its

[8] Brief for the Commission. Part II, pages 271–274.

[9] Brief on behalf of Famous Players-Lasky Corporation in answer to Supplemental Brief for the Federal Trade Commission. Docket No. 835.

contracts with exhibitors should show no sales at all to many exhibitors and large numbers of sales of all of the pictures offered in its various blocks . . . Instead of the suggested showing they demonstrate clearly that the vast majority of the sales of Paramount pictures have been for relatively small portions of the whole number of pictures offered in the various blocks. They demonstrate clearly that the practice has been for exhibitors to select their favorite subjects and to refuse to buy the pictures which they do not desire.

Commission's counsel, however, rely upon the testimony of some 16 exhibitors who testified in some form or other that they had been forced to take all or none of certain blocks of Paramount pictures in order to get any of the pictures in the block.

In direct answer to this evidence respondent produced the contracts which these very exhibitors had made covering the blocks of pictures with respect to which they had testified. These contracts showed that these 16 exhibitors had actually entered into 322 separate contracts for Paramount pictures in Groups IV, V and VI, each contract resulting from a separate negotiation. These groups are all the pictures for the respective seasons 1920–1921, 1921–1922, and 1922–1923, and the groups were in turn divided into varying numbers of blocks. *Of these* 322 *separate contracts, only* 31 *were for all of the pictures in any block, while* 98 *contracts were for but a single picture each.* Can there possibly be any more convincing evidence that respondent has not practiced the sales policy of "all or none," than the fact that the Commission's own witnesses who testified that they were compelled to buy "all or none" *entered into less than* 10% *of all their contracts with respondent for all the pictures in any one block, while* 90% *of their contracts were for less than all the pictures in the block?* . . .

Aside from the fact that their evidence seems entirely unworthy of belief, there is another reason why the Commission should not accept it as proof that Famous Players-Lasky Corporation has followed the policy of selling its pictures on the basis of all or none. The undisputed evidence in this proceeding shows that during each of the three theatrical seasons mentioned respondent had at least 12,000 theatrical customers. Of these customers, Commission's counsel produced only 16, who testified that the Company had sold or attempted to sell its pictures to them on the basis of all or none. The testimony of these 16 witnesses is not enough to establish proof of the use of an unfair method of competition, assuming it to be true and assuming further that such a policy is unfair.

. . . . .

An analysis [Exhibit 1] was made of all the exhibitor accounts which purchased Paramount pictures from Groups IV, V and VI, to ascertain what proportion of the total Paramount product for each year was purchased by these exhibitors.

This study, of course, deals only with exhibitors who bought *some* Paramount pictures, and takes no account of the *thousands* of exhibitors who *never bought any.* The study embraced nine territories as follows:

Exhibit 1

Accounts Which Contracted for Various Percentages of Pictures Offered Them from Groups IV, V, and VI, Irrespective of the Number of Contracts Covering the Same[10]

Nontheatrical Accounts and Those in which Famous Players-Lasky Coporation Controls are Not Considered

Note: This analysis includes all contracts taken on Groups IV, V, and VI up to March, 1924, on Atlanta and to June, 1924, on the other Exchanges

Exchange Territory	Accounts Taken from Group IV											
	100%		Over 90%		Over 75%		Over 50%		Over 25%		Less than 25%	
	Of the Pictures of the Groups											
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Atlanta	20	4.6	51	11.8	65	15.0	118	27.2	227	52.4	206	47.6
Charlotte	10	3.1	54	16.6	68	20.9	109	33.5	172	52.9	153	47.1
Dallas	41	7.3	104	18.5	146	26.0	230	40.9	352	62.6	210	37.4
Oklahoma City	19	5.7	55	16.4	82	24.4	118	35.1	207	61.6	129	38.4
Boston	21	3.8	85	15.6	121	20.4	207	38.0	314	57.6	231	42.4
New York	31	4.6	101	15.1	143	21.4	274	41.0	444	66.5	224	33.5
Cleveland	4	1.4	39	13.4	51	17.5	91	31.2	156	54.4	136	46.6
St. Louis	24	6.8	56	15.9	77	21.9	121	34.4	217	61.6	135	38.4
Los Angeles	8	2.2	62	16.8	89	24.2	133	36.1	199	54.1	169	45.9
Total	178	4.6	607	15.6	842	21.7	1,401	36.1	2,288	59.0	1,593	41.0
	Group V											
Atlanta	37	9.9	103	27.3	119	31.0	136	35.0	193	50.1	187	49.9
Charlotte	7	2.4	51	16.6	68	22.1	98	31.9	129	42.0	178	58.0
Dallas	26	5.3	114	24.0	179	37.7	228	48.0	296	62.4	179	37.6
Oklahoma City	2	0.7	50	17.4	81	28.2	108	37.6	184	64.1	103	35.9
Boston	8	1.4	76	13.3	118	20.6	203	35.4	347	61.6	226	39.4
New York	9	1.4	91	13.7	134	20.2	265	39.9	462	69.5	203	30.5
Cleveland	5	1.6	33	10.6	66	21.2	113	36.3	175	56.3	136	43.7
St. Louis	4	0.9	39	9.3	93	22.0	172	40.8	297	70.4	125	29.6
Los Angeles	1	0.0	36	9.4	84	21.9	129	33.7	221	57.7	162	42.3
Total	99	2.6	593	15.6	942	24.8	1,452	38.2	2,304	60.6	1,499	39.4
	Group VI											
Atlanta	20	7.7	76	29.2	79	30.3	141	54.2	170	65.4	90	34.6
Charlotte	15	7.4	91	45.1	102	50.6	133	65.9	154	77.0	48	23.0
Dallas	60	22.1	120	44.1	129	47.4	173	63.6	211	77.6	61	22.4
Oklahoma City	34	19.3	83	47.2	93	52.8	128	72.6	165	93.7	11	6.3
Boston	6	1.1	174	33.1	217	41.2	301	57.2	411	78.1	116	21.9
New York	23	3.6	168	26.8	226	36.1	365	58.3	505	80.7	121	19.3
Cleveland	29	9.8	99	33.4	115	37.6	173	58.5	216	72.9	80	27.1
St. Louis	25	8.1	133	43.2	155	50.3	195	63.4	239	77.6	69	22.4
Los Angeles	11	3.1	140	40.2	153	43.9	196	56.2	243	69.6	106	30.4
Total	223	7.4	1,084	35.9	1,269	42.1	1,805	59.8	2,314	76.7	702	23.3
Total 3 Groups	500	4.7	2,284	21.3	3,053	28.5	4,658	43.5	6,906	64.5	3,794	35.5

Total instances where an account contracted for pictures on Groups IV, V and VI—10,700.

[10] Respondent's brief, Vol. I, in case of *Federal Trade Commission* v. *Famous Players-Lasky Corporation*, p. 522.

Atlanta, Charlotte, Dallas, Oklahoma City, Boston, New York, Cleveland, St. Louis, and Los Angeles. These territories represent approximately 40% of the whole country.

In the territories mentioned there were a total of 3,881 accounts who took some Paramount pictures from Group IV. 21.7% of these accounts took over 75% of the pictures, while 41% took less than 25% of the pictures. Furthermore, nearly every exhibitor contained in the 21.7% of the accounts who took over 75% of the pictures did so by several contracts negotiated at separate times and each comprising fewer pictures . . .

There were 3,903 exhibitors in the 9 territories who bought some Paramount pictures from Group V. 24.8% of them, most of them by many contracts each involving fewer pictures, ultimately took over 75% of the pictures in the group, *while* 34.4% *took in the aggregate less than* 25% *of the pictures.*

There were 3,016 exhibitors in the 9 territories who bought some Paramount pictures from Group VI. 42.1% of them took over 75% of the group, *while* 23.3% *took less than* 25%.

The great success in selling Group VI was not due to any "all or none" policy but to the fact that the pictures of that group were of a higher average quality and therefore more popular with the exhibitors than the pictures in Groups IV and V. Exhibitors also testified that the pictures in the first block were of a higher quality than those in the second block and the studies show that in each of the territories under consideration the number of pictures sold in block 1 greatly exceeded the number of sales from block 2.

Totaling the figures obtained from the foregoing studies of three selling seasons, out of a total of 10,700 annual accounts there were 3,053 which, each with numerous separately negotiated purchases for few pictures, ultimately took in the aggregate more than 75% of the pictures for one year while there were 3,794 which took less than 25% of the year's pictures.

Of the 3,053 accounts which ultimately took in the aggregate more than 75% of all the pictures offered for any one year, only 500 or 4.7% took all the pictures offered for any one year.

The 10,700 annual accounts signed a total of 47,288 separately negotiated contracts. Of this total only 1,741 or 3.7% were for all of the pictures offered to the exhibitors at the time the particular contract was executed.

Commission's counsel assert that respondent deprives its customers of "freedom of choice" by automatically increasing its price 50% or 75% when less than all the pictures offered are desired . . .

. . . . .

The first witness definitely limited this estimate to a situation where one picture alone was selected out of a group of many, and in response to a question from Commission's counsel stated that where an exhibitor purchased half the block the price increase per picture would be only from 20% to 25%.

All of the witnesses who testified on this subject were careful to point out that the price increase was based upon their estimate of the increased selling cost involved in selling a block of pictures piecemeal rather than wholesale. They pointed out that for an exhibitor to select only a few out of a block of pictures made it necessary to canvass that exhibitor repeatedly until the other pictures had been sold to him or it had been demonstrated that it was useless further to solicit him. All of them mentioned the many elements which resulted in greatly increased selling cost and all stated that it was upon this increased selling cost that the increased retail price was based.

The General Sales Manager of the Company testified that to his positive knowledge the price increase asked in situations where only a few pictures were selected by exhibitors did not average 25% . . .

. . . . .

While Commission's counsel offered no evidence to sustain the oft-repeated charges in Commission's Supplemental Brief that the block booking policy results in using up all of the available exhibition time of competitors, respondent's counsel offered in evidence carefully prepared statistical summaries showing the situation in all theaters (based upon a geographical selection of about 40% of the total number) and, upon subpoena from the Commission, the situation in first-run theaters in 27 key cities specified by Commission's counsel. This latter information was embodied in respondents' Exhibit 79, with the following result:

One hundred twelve first-run theaters out of a total number of 195 such theaters in the 27 key cities mentioned played some Paramount pictures out of Group IV. Of them only 5 played more than 90% of any block, only 10 played more than 75% of any block, only 20 played more than 50% of any block and only 57 played more than 25% of any block, while 55 played less than 25% of each block. Eighty-three first-run theaters played no Paramount pictures.

One hundred twenty-eight first-run theaters in the 27 key cities mentioned played some Paramount pictures out of Group V. Of them only 2 played more than 90% of any block, only 4 played more than 75% of any block, only 16 played more than 50% of any block, and only 43 played more than 25% of any block, while 85 played less than 25% of each block; 67 first-run theaters played no Paramount pictures. One hundred eight first-run theaters in the 27 key cities played some Paramount pictures out of Group VI. Of them only 4 played more than 90% of any block, only 6 played more than 75% of any block, only 17 played more than 50% of any block and only 37 played more than 25% of any block, while 71 played less than 25% of each block. Eighty-seven first-run theaters played no Paramount pictures.

The Federal Trade Commission replied:

Respondents have placed voluminous exhibits in the record purporting to have been compiled from their sales records in various exchange centers showing the number of sales made out of the total number of pictures offered from time to time, which they claim refutes

the charge of block booking. There are so many elements that enter into these sales to theaters outside of the key cities that the exhibits are of no value. The proof is that in many of the exchange territories there are from 60% to 70% of all the towns where there is no competition and these towns are referred to in the evidence as "closed towns" or "one-man towns." These closed towns are largely confined to the small towns of 10,000 and under where one man owns all the theaters, and includes that great number of small towns where there is only one theater. Of course, where there is no competition block booking cannot be forced profitably because the exhibitor controls the market and, monopolistic-like, selects the pictures and names the price he will pay and the producer accepts it or his pictures are not shown in the town. Many of these small-town theaters only run one or two days a week, using but a few pictures, and those are more apt to be the western "shoot-'em-up" kind than the high-grade society and costume feature pictures produced by the respondents. There is nothing on the face of the exhibits to show which towns are closed, which ones are open, the number of pictures used, the character of pictures demanded, or the price paid.

In making up these elaborate percentage tables contained in these voluminous exhibits each one of these little theaters offsets the large theaters in the larger cities where block booking is enforced. There are many elements that might be mentioned that destroy the value of these percentage tables and make them positively misleading.

In commenting on the Brookhart bill, at a hearing before the Committee on Interstate Commerce, United States Senate, February 27, 1928, Senator Brookhart said:

> The bill steers a straight course between block booking on the one hand, and the right voluntarily to buy in quantities and obtain advantage of a fair quantity discount. This course seemed desirable from all standpoints. Obviously, however, no such plan will work unless provision is made for some method, by which to establish fair differentials between groups of pictures and single pictures, or small quantities of pictures. The bill says that the Federal Trade Commission may, after full hearing, fix such fair differentials.
>
> . . . . .
>
> We have no objection to them selling in blocks, but the objection that this bill reaches is the proposition that when they are offered for sale in blocks you also say to the buyer, "You take this whole block or you get nothing."

Senator Brookhart referred to the action before the Federal Trade Commission in the following words:

> The Federal Commission, after several years of litigation, has issued an order against the Famous Players-Lasky Corporation,

the largest of the producer-distributors, to require it to cease and desist from block booking. To sustain this order will require additional years of litigation in the courts. Moreover, it applies only to one producer-distributor, and proceedings would have to be had against at least six others to accomplish reform on this one point.

A series of hearings was held on the bill presented by Senator Brookhart, but Congress adjourned without taking any action.

The Brookhart bill was designed to prohibit blind booking as well as block booking. It should be noted, however, that blind booking was not inherently a part of block booking.

At the hearing on the Brookhart bill before the Interstate Commerce Committee of the United States Senate, block booking was attacked by Senator Brookhart and several exhibitors who declared that it denied the exhibitors freedom of choice in the selection of pictures to be shown upon their screens. Senator Brookhart, at this hearing, said:

> The exhibitor is required to take the pictures of any given producer in blocks or groups ranging from a dozen to 60 pictures.
>
> That is to say, the producers release their films in blocks or groups and the exhibitor must take all of the pictures included in such block, the good with the bad, the suitable with the unsuitable, or have none.
>
> In other words, the exhibitor, in order to get the films of a certain producer which are suited to the tastes of his patrons and which he knows they will want to see, must take many other films not so suited which may prove even offensive to his patrons. While this rule is enforced as to independents it is not so enforced as to the producer-controlled theaters.
>
> You will see at once what a powerful weapon this method of marketing films is in the hands of the great producer-distributors in their competition with the independent exhibitors. The producers allocate to their theaters only the choice films which have been previewed. The independent exhibitor on the other hand must take whatever is offered him by his competitor who controls the product, and must take it blindly. It is no answer to say that if a particular buyer does not like the block offered by one producer he can take the block of another. The result to him is the same in both cases; he must buy something he does not want in order to get something that he does want.

The exhibitors[11] said in part:

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[11] Sydney E. Samuelson, Newton, New Jersey; Leo Brecher, New York City; Fred J. Harrington, Pittsburgh, Pennsylvania; Henry Staab, Milwaukee, Wisconsin.

How many small merchants in a position relative to our position, could junk 10% of the merchandise that they buy and not use it, not sell it; pay for it and not sell it; because they make a mistake, or because they were compelled to buy it? . . . There are probably more than 10% of the pictures on blocks that are not suitable for the particular theater that gets them, that is forced to pay for them, to take them or get no films.

. . . . .

Our small theater in our small town has an insufficient margin of profit to pay for films bought, not to use, but in order to put in another picture. In other words, we cannot buy pictures and pay for them under the contract and then not use them in order to make room for another picture. When my playing time is filled up with pictures I am compelled to take, in blocks, I am unable to buy of other producers. If there were no blocks, I would be able to select the best pictures from time to time.

. . . . .

After all, he (the exhibitor) has to answer for an undesirable product that he shows. At present he still has to answer, although in many cases it is not his choice, it is not his fault, if a picture is not desirable. He has to buy it long before it is made, and when it does come along he only has one choice. If he does not like the picture he can pay for it and leave it there. Now, he cannot pay for an unlimited number of pictures through the year, but if there are too many of them he can be put out of business by that very thing. A man cannot buy unsalable merchandise without limit.

. . . . .

If you abolish block booking and blind buying you have placed the responsibility for pictures exhibited, where it belongs—on the theater. The theater will have no more argument saying that it is compelled to play certain pictures. The responsibility is where it belongs—on the retailer.

And then if the theater owner who is incompetent or incapable avails himself, if he so desires, of buying blind or buying in blocks, that is a matter for his individual business judgment, and the consequence be upon his own head.

A New Jersey exhibitor[12] declared that block booking denied to the people in certain communities some of the better pictures each year. The exhibitors in these communities, being forced to choose their pictures in blocks, frequently were unable to show some of the outstanding pictures of the year contained in the blocks sold by producers from which they did not buy. This exhibitor said:

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[12] Mr. Sydney E. Samuelson, testifying before the Interstate Commerce Committee of the United States Senate at the hearing on the Brookhart bill. See page 50 of the report of that hearing.

> Block booking denies to the public in certain localities certain pictures. Now, taking my own case as a specific instance, in Newton I can use only 234 pictures a year. The estimates vary, and I do not know the exact number, but there are some 600 to 700 that are released. If I should buy under this block booking system, the numbers that are forced on me by each of the various distributor-producers, and if I should buy the leading films, or the films that are considered to be leading, I would buy Famous Players, 70; Metro, 50; First National, 50; a total of 220; [13] and the balance of the 400 pictures, good, bad, or indifferent, could not be bought or shown in that theater. That is what the block booking does. Locked out by reason of the block booking condition are the pictures of Pathe, Warner, Universal, United Artists, F.B.O., Columbia, Tiffany, Commonwealth, and others.

Several exhibitors testifying before the Federal Trade Commission declared that block booking forced many exhibitors to buy more pictures than they could use. They testified that distributors frequently forced exhibitors to take complete blocks even though they knew the exhibitors did not have sufficient playing time open during the year to show them. These statements were corroborated by exhibitors testifying at the hearing on the Brookhart bill. An exhibitor in Pennsylvania made the following statement about conditions in that state:[14]

> The condition confronting the independent theater owners of western Pennsylvania is more precarious, I believe, than in any other district of the United States on account of the coal strike taking part in that territory. We find theaters that have been bound through this order of block booking to overload themselves.
>
> As an illustration of this, I cite the town of Bentleyville, Pennsylvania. One man there bought out the other theater. There are three in the town, two of which he owned prior to the strike and one that he bought out just at the time the strike was declared. Within six weeks of the declaration of the strike two of the theaters were closed down indefinitely. The other theater he had left open only one night a week. He had approximately 374 pictures booked for the three theaters. The reason for that was that he had been forced to buy in block. He could not buy the pictures as he used them. The ruling was, per the contract, that he had to play all of those pictures from the companies or the clause in the contract would be used against him, denying him

[13] This obviously is a misprint in the report. He probably meant to include also 50 pictures from the Fox Films Corporation.

[14] Testimony of Fred J. Harrington at hearing on the Brookhart bill.

the right of any pictures from any producers connected with the organization.[15]

Leo Brecher, who operated three theaters in metropolitan New York and represented the Theater Owners' Chamber of Commerce, testified before the Interstate Commerce Committee of the Senate as follows:

> As a result of this producer-distributor forcing an exhibitor to accept all of his pictures in order to get any of them at all, other producers are shut out of that particular theater. If Famous Players made 80 pictures during a given year and they would come into a town and force the exhibitor to buy all of their 80 pictures, then all of the other producers were automatically kept out of that town . . . by the fact that all their booking time was filled up.
>
> . . . . .
>
> There are a number of independent producers and distributors, but their development has been checked and their number has decreased, as the Senator pointed out, from some 34 to about 12 or 13 by reason of this block booking method.
>
> There are only so many weeks in the year; there are only so many dates on which pictures can be played; and if a producer forces his product, either through withholding desirable pictures until the exhibitor buys all of them, or through the threat of building a theater and putting him out of business in that way; if this exhibitor has his time filled up with the product of one or two or three of these producers he has no time to go to this independent producer.

The Federal Trade Commission quoted the following testimony of Mary Pickford, who released her pictures individually through the United Artists Corporation:

> A. In certain places in the United States we have realized great difficulty in selling our pictures.
>
> Q. What difficulty did you have that interfered with the sale of the pictures?
>
> A. Well, the theaters had purchased the year's output, for one reason. They had their 52 pictures, or whatever pictures that they needed, that they had bought in the block, and they had no room for our productions. And another was that they would not pay and we could not accept the prices they offered us.
>
> Q. Did you find that you experienced any difficulty by reason of certain producers owning theaters?
>
> A. Yes, we did.
>
> Q. What was the condition that you found in that particular?

[15] Motion Picture Producers and Distributors of America, Incorporated.

A. That they didn't bid for our pictures; they had no room for them; that they simply put their own pictures in there.

Q. To what extent did the block booking and the ownership of theaters by producers interfere with the market for your pictures?

A. Well, in certain sections . . . we were forced to go in cheap houses on side streets instead of the picture theaters, thereby losing money.

The Federal Trade Commission stated in Volume II of its main brief:

In order to control a theater it is not necessary for a producer-distributor to own or lease the theater because if all, or substantially all, of the exhibition time of the theater is taken up in showing the product of one producer-distributor the theater is ipso facto closed to all other producers. This result is obtained by means of a sales policy known in the industry as block booking . . .

The producer's market is the theater; the distributor is the middleman. Block booking as practiced by the respondent is an unreasonable restraint because it closes the market to all other producers and compels the exhibitor to take the inferior pictures in order to get the good ones. It is an all or none policy because if the exhibitor desires to make a selection the price is made prohibitive.

. . . Manifestly, if an exhibitor, by the block booking system, is forced to take desirable and undesirable pictures to such an extent that all of his playing time is filled then all competition, as far as that theater is concerned, is eliminated and likewise if substantially all of his playing time is thus taken up then competition, as far as his theater is concerned, is substantially lessened. When this occurs in but a single instance the industry is, of course, not affected in the least, but when the system is practiced on a large scale and great numbers of exhibitors are thus tied up the injurious effect will be felt throughout the entire industry . . .

. . . The amount of restraint upon other producers varies according to the number of pictures in a block or blocks and the number of pictures used by the exhibitor.

The unfairness of this system of block booking is that it forces upon exhibitors, in greater or less numbers, pictures which they would not purchase under other conditions thereby depriving other producers of business which they would otherwise obtain were the pictures purchased on an open market basis. This is what is known as full-line forcing and is well described by former Commissioner Joseph E. Davies in his treatise on Trust Laws and Unfair Competition, p. 321, section 14:

This consists in a requirement that specified goods be handled on pain of refusal to furnish certain other goods or to give certain discounts or other favorable terms. It is often called full-line forcing, because a manufacturer of a particular brand of goods which is specially desired may insist that all his other goods for which there is no special

preference, shall be taken in lieu of those of rival makers as a condition of obtaining supplies of specially desired goods, thus attempting to force the dealer to handle the "full-line" of the manufacturer. Thus, a former Commissioner of Corporations complained that salesmen of the International Harvester Company used to require dealers to order the so-called "new lines" (i.e. tillage implements, wagons, manure spreaders, etc.) as a condition of retaining the agency of some brand of the Company's harvesting machines. Full-line forcing is closely analogous to the requirement of exclusive dealing. The latter forbids buying from competitors; the former requires that goods which might otherwise be bought from competitors be bought from the company which enforces the demand. The exclusive-dealing requirement may cover a single article and have no reference to any other, but the essence of the full-line forcing method is the tying of two or more articles together. This method is available, therefore, only to a seller who can, by control of a product necessary or desirable to dealers in a certain line, induce them to buy from him either products of which he has not exclusive control or products which they may not care to buy at all. This character of contracts, by different methods, accomplishes the same result, to wit, the elimination of the independent dealer from the market and such contracts have been held to be unfair competition and illegal under the Common Law.

The Famous Players-Lasky Corporation in its brief replied to the charge that block booking tended to eliminate competition. It stated:

> The real gist of the charge that block booking is an unfair method of competition is that it is a method disadvantageous to respondent's weak competitors. It is true that the use of block booking makes the respondent a more effective competitor. Likewise it is true that exhibitors prefer to buy blocks of pictures backed by an established trade name and manufactured by a company with a reputation for producing consistently good product. It is also true that because respondent can offer pictures in blocks it has a price advantage over its smaller and weaker competitors. Likewise it is true that the smaller competitors of respondent who cannot produce and offer for sale blocks of pictures are at a disadvantage in competing with a company of the size of respondent, able to offer to exhibitors, season after season, a considerable number of pictures at one time. But these advantages are merely the legitimate advantages of business efficiency.
>
> Every time respondent sells a block of pictures to one theater it has the necessary result of making it improbable that a competing distributor will sell its pictures for exhibition during the time consumed by the exhibition of respondent's pictures. Likewise such a sale prevents any other theater from exhibiting the pictures which have been sold to such exhibitor. Commission's counsel

> forget entirely that by virtue of having sold all of its pictures in a block to one theater respondent has lost as possible customers all other competing theaters of the same class, which automatically become exclusively available to respondent's competitors.[16]
>
> But, let us again repeat, block booking as practiced by Famous Players-Lasky Corporation involves no covenant or understanding at all on the part of exhibitors not to buy pictures produced by competitors of respondent . . .
>
> Indeed it does not even have that much of an "exclusive" effect. There is not a shred of evidence in the testimony to show that Famous Players-Lasky Corporation has ever sold to the operator of any theater enough pictures to consume his entire available exhibition time for any substantial number of weeks. In 1920 Famous Players-Lasky Corporation manufactured 93 pictures, but since 1921 it has never manufactured more than 75 pictures in one season. The number of motion picture theaters in the United States which do not require for the needs of any one season many more pictures than 75 is few. The vast majority of theaters in operation in the country today require in excess of 156 pictures a year.

To support its statement that it did not unduly preempt the playing time of exhibitors, the Famous Players-Lasky Corporation presented the table shown in Exhibit 2.

Many exhibitors believed that block booking unduly protected unworthy pictures by making it possible for the producer to get revenue from them by selling them in blocks with the pictures of higher quality. Two exhibitors said:

> Block booking permits a producer-distributor to sell a picture before it is made (blind buying) and then deliver an inferior or a completely different picture. The proposition sheets submitted to exhibitors this year specifically reserve the right to the producer to change titles, cast, story, and director, and the contract of sale gives the theater owner nothing but so many reels of films.[17]
>
> The contention is that by selling pictures in a block you are enabled to get revenue out of pictures that are not worthy of revenue, and that the loss resulting from that, consists first of all in the necessity of the exhibitor who is obliged to take the block, using pictures that are not bringing him any money into the theater; and secondly, it results in the waste of other good pictures that have been made by other producers which do not get a look-in and do not get any revenues at all, because the time is

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[16] Brief on behalf of Famous Players-Lasky Corporation in answer to Supplemental Brief for the Federal Trade Commission, Docket No. 835.

[17] Testimony of Mr. Samuelson at the hearing on the Brookhart bill, February 27, 1928.

EXHIBIT 2

EXTENT TO WHICH AVAILABLE EXHIBITION TIME IS CONSUMED BY PARAMOUNT PICTURES[18]

Nontheatrical Accounts Not Counted

Exchange Territory	Percentage of U. S. Film Rentals Usually Expected from This Territory	No. of Theaters	Total Number of Feature Exhibitions in This Territory during Theatrical Season of 1920–21	1921–22	1922–23
Atlanta	2.90*	475	86,570	86,138	83,485
Charlotte	1.18	410	55,421	58,665	58,239
Dallas	2.79	795	154,331†	116,056†	82,230†
Oklahoma City	1.28	466	92,539	93,862	70,605
Boston	5.94	828	94,620	95,259	95,817
New York	9.91	923	209,397	208,357	207,339
Cleveland	2.90	444	82,568†	92,568†	66,396
St. Louis	2.37	632	107,758	106,949	104,520
Chicago	7.03	676	154,714	153,114	148,746
Denver	1.57	639	51,529	52,008	53,168
San Francisco	3.21	571	104,228	91,655	101,430
Los Angeles	3.65	581	72,835	73,834	74,508
Total	44.73	7,440	1,266,510	1,218,465	1,146,483

Exchange Territory	Exhibitions of Paramount Features in This Territory from Releases of the Theatrical Season of‡ Group IV 1920–21 No.	%	Group V 1921–22 No.	%	Group VI 1922–23 No.	%	Exhibit Number
Atlanta	12,615	14.6	12,232	14.2	10,889	13.0	270
Charlotte	11,374	20.5	8,363	14.2	9,420	16.2	199
Dallas	21,726†	14.0	16,780†	14.4	12,662†	15.4	170–71–72
Oklahoma City	13,345	14.4	9,485	10.1	8,722	12.3	179
Boston	20,019	21.2	17,628	18.5	22,824	23.8	204
New York	27,955	13.4	21,758	10.4	25,818	12.5	296
Cleveland	8,739	10.6	8,482†	10.3	12,182	18.3	143
St. Louis	13,135	12.2	13,260	12.4	13,956	13.4	271
Chicago	19,106	12.3	18,044	11.7	23,430	15.7	195
Denver	11,669	22.5	11,394	21.9	12,417	23.4	180
San Francisco	15,850	15.2	14,984	16.3	17,375	17.1	193
Los Angeles	13,724	18.9	11,042	15.0	14,035	18.8	182
Total	189,257	14.9	163,452	13.4	183,730	16.0	

* Present Atlanta territory is 1.80%. Figure shown here is for Atlanta territory when Contract Record Book was used.
† Estimated from days open. Same percentage as Paramount ratio of features to days.
‡ Exhibitions played or contracted for to July, 1924.

[18] Brief on Behalf of Respondents, Vol. I, in *Federal Trade Commission* v. *Famous Players-Lasky Corporation*, p. 523.

filled up by these unworthy pictures. I do not say that these bad pictures are made deliberately or intentionally. (I think it is absolutely true that every producer makes an honest effort to make every one of his pictures very, very good and a worthy thing to be shown to the public.)[19]

Should producer-distributors be compelled to sell each picture on its merits, waste in production would have to be eliminated, and a theater owner could select those films for his public which his patrons approve and desire. It will be argued, no doubt, that this will result in severe losses on unpopular pictures. True, but no more severe than losses incurred by manufacturers in other lines of business, who produce and attempt to sell unworthy goods. It merely means that eventually those producers, who are most capable, and best fitted to supply Americans with motion pictures to their liking will survive.[20]

A further contention of those who attacked block booking was that it resulted in the production of too many pictures. By offering protection to all the pictures included in a block the practice encouraged producers to make more pictures than the market could profitably assimilate. Since every picture in a block was insured a certain revenue the number of pictures produced was not subject to the usual limitation of reduced income.

The Federal Trade Commission in its brief made the following interpretation of some of the testimony presented to it:

Under the policy of selling as outlined by Greene above an exhibitor could not buy a single picture out of a star series and his refusal to buy a sufficient number of series at the price demanded, to take all his playing time and close his market for all other product, would result in Zukor's company acquiring and operating an opposition theater.

Robert Lieber owned a large theater in Indianapolis seating 2,800 and used 52 pictures a year. He had, theretofore, been able to buy a part of Paramount program, but for the season 1916–17 he was told by the exchange manager that, in order to get any Paramount pictures, he would have to buy all 52 that he used from Zukor's company. Lieber took it up with the New York office and it confirmed the local exchange . . . This policy was shutting out and destroying the small independent producer of pictures. Lieber, since 1918, has been the president of First National.

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[19] Testimony of Mr. Brecher at the hearing on the Brookhart bill, February 27, 1928.

[20] Testimony of Mr. Samuelson at the hearing on the Brookhart bill, February 27, 1928.

The exhibitors wanted to get better pictures than they were able to buy and at a price they could afford to pay. They were compelled to buy all or none. The prices were prohibitive.

. . . . .

The Examiner's Findings show the testimony of exhibitors in different parts of the country who were forced by the respondent to take all of a block or blocks or none and their many objections to this practice. In addition to this evidence we desire to call the attention of the Commission also to the resolutions passed by the New York Theater Owners' Chamber of Commerce on August 2, 1923. (Com. Ex. 344, 345; R. P. 6590–94.) This is an exhibitor organization with a membership which represents 500 of the leading theaters in metropolitan New York. These resolutions were submitted to the entire membership two weeks prior to this meeting in order that all might have ample opportunity to consider and discuss them. The resolutions severely condemned the practice of block booking and were passed unanimously. This action by such a representative body of exhibitors is indicative of the attitude of the exhibitors throughout the industry. Probably the best known exhibitor in the United States in recent years is Samuel L. Rothafel, better known to his millions of radio acquaintances as "Roxy." He was for years manager of the Capitol Theater in New York, one of the largest and finest houses in the United States. In his testimony (pp. 721–2) he points out the evils of this system—how it compels the exhibitor to take the bad pictures in order to get the good ones. He is unalterably opposed to the system. His testimony is convincing because in the management of his theater he has been forced, against his will, to take all of the pictures of the Goldwyn Pictures Corporation, which owns an interest in the theater, and he therefore speaks from experience. It naturally follows that this practice affects the public because when the exhibitors are forced to take inferior product the theater-going public is forced to pay its money to see poor pictures.[21]

On July 9, 1927, the Federal Trade Commission, having completed the taking of testimony regarding block booking and other practices of the Famous Players-Lasky Corporation alleged to be unfair and in restraint of trade, issued a statement[22] of its findings on the complaint. The following quotation from paragraph 10 of the statement gives the findings regarding block booking:

PARAGRAPH TEN: On July 22, 1919, respondents Zukor, Lasky and Famous Players-Lasky Corporation, had become, long had been, and still were, the dominant power in the moving picture industry.

[21] From brief for the Federal Trade Commission, Part II, p. 165.

[22] Findings as to the facts and conclusion, Docket 835 before the Federal Trade Commission.

Said corporation . . . produced films sufficient to offer, and lease, to the exhibitors of the country complete programs. Its product comprised certain films of extraordinary merit for which there was growing imperative demand by patrons of moving picture theaters. Its complete program was equal or superior to any complete program being offered by other distributors of films, but its program included films of lesser merit which were not suitable for exhibition in the best theaters, and for which there was little or no demand among the patrons of such theaters. To meet the demands of his patrons, an exhibitor operating a theater charging higher prices of admission and appealing to patrons of discriminating taste was compelled to exhibit such films of unusual merit and for which there had been so created a great demand, but was subject to adverse criticism by his patrons and to financial loss, when he also exhibited said films of lower qualities. To maintain the standard of his theater and the favor of his patrons, an exhibitor catering to discriminating patrons found it necessary to exhibit the better films of respondent, Famous Players-Lasky Corporation, and also the films of other producer-distributors of films, exercising therein a discriminating freedom of choice.

On July 22, 1919, the board of directors of Famous Players-Lasky Corporation, . . . for the purpose of modifying, perpetuating and making more effectual its said distribution policy as distinguished from the lease of individual pictures, and for the purpose of intimidating and coercing exhibitors to lease and exhibit films produced and distributed by Famous Players-Lasky Corporation, adopted a progressive and increasing policy of building, buying, owning or otherwise controlling theaters, especially first-class, first-run theaters in key cities to be used to give to the best picture films produced by Famous Players-Lasky Corporation first-run exhibitions under the most favorable conditions, to advertise and exploit said films, create a popular demand for their exhibition by the patrons of the theaters of the better class in territories adjacent to said several key cities, and to make leases for their exhibition indispensable to the successful operation of such class of theaters.

Famous Players-Lasky Corporation adopted the fixed method of leasing, and does lease, its films under a system known in the trade as "block booking." Under such plan films are offered in "blocks" only. The number of films in a block is not uniform. The numbers most frequently offered are sufficient to occupy the available exhibition time of a theater for three months or for one year. Such blocks contain 13 or 26 films, or 52 or 104 films according to whether the theater changes films once or twice a week. The individual films in blocks being offered at any time are not always identical. Films are included in a block offered to an exhibitor which the agent of Famous Players-Lasky Corporation chooses for that purpose, and which he deems to be within the revenues of the exhibitor. A block is so constituted as to contain certain films which the exhibitor feels compelled to lease and exhibit and also other films of lower quality which the exhibitor

does not desire to lease and exhibit and which the exhibitor considers to be unacceptable to his patrons.

Respondent Famous Players-Lasky Corporation has maintained and still maintains said unfair distribution policy. It offers to lease, and does lease, blocks of films as such, the exhibitor taking all as offered or none. If an exhibitor declines to take all, the block is successively offered to his competitors until a sale is made. As an alternative, Famous Players-Lasky Corporation sometimes offers to permit an exhibitor, who declines to lease a block, to lease less than the whole block at prices so high as to make it impossible for him successfully to compete with rival theaters, to wit: at prices arbitrarily fixed at from 50% to 75% higher than the estimated prices of such films as parts of the block. The purpose and effect of such alternative offer is to coerce and intimidate an exhibitor into surrendering his free choice in the leasing of films and into leasing films in blocks as offered, thereby denying to such exhibitor the opportunity or privilege of leasing and exhibiting certain other films of higher qualities and which such exhibitor's patrons demand and which such exhibitor desires to exhibit. Only in case all competitors in any community refuse to lease a block of films does Famous Players-Lasky Corporation lease for use in that community the films contained in such block upon some other basis to be arrived at by negotiation between the sales agent of Famous Players-Lasky Corporation and the exhibitor.

The purpose and necessary effect of such distribution policy is to lessen competition and to tend to create a monopoly in the motion picture industry, tending to exclude from the market and the industry small independent producers and distributors of films and denying to exhibitors freedom of choice in leasing of films.

Because of the dominant position of Famous Players-Lasky Corporation in the motion picture industry, its methods of competition, policy and practice are necessarily followed, adopted and maintained by all competitors of Famous Players-Lasky Corporation that are strong enough to acquire and operate first-class first-run theaters to exploit their most meritorious pictures and to offer to lease, and lease, films in blocks only and in sufficient numbers to occupy the available exhibition time of exhibitors. Thereby it is made difficult for small and independent producers or distributors of films to enter into or remain in the moving picture industry or market, or to lease individual pictures on merit. It destroys the freedom of exhibitors to choose according to their judgment and taste films for exhibition and to exhibit only films that in their opinion are meritorious and acceptable to their patrons; and the public is deprived of the power to influence exhibitors in the choice of films and of the benefit of continuous exhibition of meritorious and acceptable films only.

. . . . .

By said methods and means so employed, Famous Players-Lasky Corporation has unduly hindered, and is unduly hindering competitors, lessening competition, and restraining trade in the motion picture

industry, and has achieved a dominant position in the moving picture industry, with a dangerous tendency toward the creation of a monopoly therein in the several parts of the United States.

In furtherance of its findings the Federal Trade Commission on July 9, 1927, issued an order to the Famous Players-Lasky Corporation to cease and desist from certain practices.[23] Paragraph 2 of the order which dealt with block booking is quoted below. All commissioners concurred on this paragraph.

> 2. From leasing or offering to lease for exhibition in a theater or theaters motion picture films in a block or group of two or more films at a designated lump sum price for the entire block or group only and requiring the exhibitor to lease all such films or be permitted to lease none; and from leasing or offering to lease for exhibition such motion picture films in a block or group of two or more at a designated lump sum price for the entire block or group and at separate and several prices for separate and several films, or for a number or numbers thereof less than the total number, which total or lump sum price and separate and several prices shall bear to each other such relation as to operate as an unreasonable restraint upon the freedom of an exhibitor to select and lease for use and exhibition only such film or films of such block or group as he may desire and prefer to procure for exhibition; or shall bear such relation to each other as to tend to require an exhibitor to lease such entire block or group or forego the lease of any portion or portions thereof; or shall bear such relations to each other that the effect of such proposed contract for the lease of such films may be substantially to lessen competition or tend to create a monopoly in any part of the certain line of commerce among the several states, or with foreign nations, involved in said proposed sale, to wit: the business of the production, distribution and exhibition of motion picture films to the public, or the business of production and distribution, or of production or distribution of moving picture films for public exhibition.

The Federal Trade Commission, being dissatisfied with the reply of the Famous Players-Lasky Corporation to its order to cease and desist, fostered a Trade Practice Conference held in New York on October 10, 1927, to seek a solution to the block booking problem. At this conference representatives of all branches of the industry agreed upon a code of ethics regarding block booking, and drew up the following suggested rules on bookings:

1. The sales method known as block booking shall not be used for the accomplishment of any illegal purpose.

[23] Order to cease and desist, Docket 835, Federal Trade Commission.

2. No distributor will require as a condition of permitting an exhibitor to lease its pictures that such exhibitor shall also lease pictures of another distributor.

3. If an exhibitor shall claim within a reasonable time prior to the date fixed for the exhibition of any picture included in any block leased by him that such picture will be offensive to the clientele of his theater, because of racial or religious subject matter, such claim shall be arbitrated by the board of arbitration of the proper zone, and, if sustained, such exhibitor shall be relieved of obligation to take and pay for such picture.

4. If any exhibitor who has purchased an entire block of pictures offered by any distributor so elects, within a reasonable time prior to the date fixed for exhibition of any picture included in such block, such exhibitor may refuse to take such picture by paying one-half of the allocated price thereof, provided that the pictures so rejected out of any block shall not exceed 10% of the number included in such block, and if a rejected picture is resold by the distributor, one-half of the net price received on such resale shall be credited against the exhibitor's obligation in respect of such picture up to the amount of such obligation.

5. Reissues will not be included in any block with new pictures.

6. Newsreels and short subjects will not be included in any block with features, and the lease of newsreels or short subjects blocks shall not be required as a condition of being permitted to lease feature blocks or vice versa.

7. The matters dealt with by paragraphs 3 and 4 shall be covered by appropriate provisions to be included in the new standard form of contract.

At the Trade Practice Conference a committee was appointed and authorized to draw up a new standard exhibition contract to be used by all distributors.

This committee met in Chicago in February, 1928, and framed a new contract which was adopted by all distributors. On the subject of block booking it provided:

Twentieth: If the license herein granted shall apply to an entire group of photoplays offered by the distributor to the exhibitor at one time, and not otherwise, the exhibitor shall have the right to exclude from this contract up to but not exceeding 10% of the total number of such photoplays, but only if the exhibitor shall give the distributor written notice of such effect at any time not later than 14 days before the date fixed for the exhibition of any such photoplay hereunder, and if at the same time the exhibitor shall pay to the distributor one-half of the license fee payable in respect of any such photoplay. In computing such 10%, fractions of less than one-half shall be disregarded. If any such photoplay shall, because of such exclusion, be hereafter licensed by the distributor for the same run as that specified in this

contract, for exhibition at another theater where such excluded photoplay would not have been exhibited if not so excluded; then one-half of the license fee (up to but not exceeding the amount paid by the exhibitor to the distributor as a condition of so excluding such photoplay) received by the distributor for such re-license shall be credited to the exhibitor by the distributor.

If the license fee of any such photoplay so excluded is to be computed either in whole or in part upon a percentage of gross receipts of the Exhibitor's theater, then for the purpose of computing such one-half of such license fee payable hereunder in respect of such photoplay, such gross receipts for each day that any such photoplay is licensed hereunder for exhibition thereat shall be deemed to be the average daily gross receipts of such theater during the period of 30 operating days immediately prior to such date of availability of such photoplay.

Twenty-first: If the exhibitor shall claim that the exhibition at the theater hereinafter specified of any photoplay licensed hereunder will be offensive to the public in the place where such theater is located, because of racial or religious subject matter, and if the exhibitor shall give written notice to the distributor of such claim within a reasonable time prior to the date fixed for the exhibition thereof hereunder such claim shall be immediately submitted to the Board of Arbitration herein specified.

If such Board of Arbitration shall specifically determine that the exhibition of such photoplay at such theater will be offensive to said public because of racial or religious subject matter, then such photoplay shall be excepted from this contract, and not otherwise. The distributor may exhibit or license the exhibition of any photoplay so excepted when and where desired by the distributor free from all claims of the exhibitor.

If the distributor shall be of the opinion that any photoplay licensed hereunder will be offensive because of racial or religious subject matter, to the public in the place where the exhibitor's theater is located, the distributor shall have the right to except and exclude such photoplay from this contract, upon condition that such photoplay shall not thereafter be licensed for exhibition in such place unless such racial or religious subject matter is eliminated therefrom in which case such photoplay shall again be deemed licensed hereunder.

The new contract also provided:

. . . No "short subjects" or "newsreels" shall be included in any group of feature photoplays, and the licensing of "newsreels" or "short subjects" groups shall not be made a condition of licensing the exhibition of feature photoplays or vice versa . . .

Following the adoption of the new form of Standard Exhibition Contract, Mr. R. F. Woodhull, president of the Motion Picture Theater Owners of America, who acted as chairman of the delegates representing the unaffiliated exhibitors at the

Motion Picture Trade Practice Conference, and Mr. R. H. Cochrane, vice president of Universal Pictures Corporation, who was chairman of the delegates representing the distributors at the Trade Conference, issued the following joint statement:

> It is the belief of the Committee that the new Contract and Rules are a great improvement over those which they will supersede, beginning May 1, 1928,—and that the new provisions and those which were omitted from the old Contract and Rules, will do much to eliminate many points of trade differences between exhibitors and distributors of motion pictures.

The Famous Players-Lasky Corporation began using the new form of contract at the same time as all other distributors.

After the contract committee had completed its work on the contract the Federal Trade Commission again asked the Famous Players-Lasky Corporation for its answer complying with the "cease and desist" order of July 9, 1927. The Famous Players-Lasky Corporation on April 14, 1928, filed a reply which consisted of a general denial of the Federal Trade Commission's charges. This reply said in part:

> Respondent Paramount-Famous Lasky Corporation makes every lawful effort to sell as much as possible of its products in every territory in which motion pictures are exhibited, and as it is an essential factor of the motion picture business that the same picture cannot be sold to two different exhibitors for exhibition in the same territory at the same time, said respondent in determining to whom it shall sell or lease its products gives consideration to the quantity offered to be taken by the respective potential customers.
>
> Upon purchases of products in quantity upon single sale the respondent grants reductions in price as compared with the prices at which the same products could be bought as the individual units, commensurate with a difference in cost to the respondent of procuring the exhibition of its products in the territory of the purchaser.
>
> Furthermore, there are exhibitors with whom the respondent, acting wholly for reasons of its own and without consultation or agreement with any other producer or distributor, does not care to do business at all or whose business is so small in amount that said respondent does not deem the business sufficiently profitable to be accepted. Each sale of pictures to each theater is an independent negotiation, involving numerous different factors affecting both quantity and quality of the pictures under consideration, the time of the proposed exhibition, and the character, location and number of theaters in which the proposed buyer contemplates their exhibition.
>
> While many of said respondent's customers purchase or lease all or substantially all of said respondent's products, and while many such

customers refuse to purchase any of said respondent's products, if respondent sells any of its product to any competing exhibitor, the great majority of sales by respondent upon a single negotiation are for materially less than all of the pictures at the time offered for sale or lease.

Subsequently the Federal Trade Commission notified the Famous Players-Lasky Corporation that the reply was unsatisfactory. It then filed a petition for enforcement of its order with the United States Circuit Court of Appeals, 2d District.

Commentary: The question as to whether or not the Famous Players-Lasky Corporation's sales policy was in restraint of trade is not the primary question for consideration. It should be noted that in the action described in this case the principal charges were directed against the method by which the corporation was alleged to be seeking to restrain competition. This method included the acquisition and control of theaters and other alleged unfair practices. Among these practices was that of block booking. It is this particular practice which introduces the major issue. Incidentally, it may be observed that in two other cases, namely, that involving First National Pictures, Incorporated, and that involving Pathe Exchange, Incorporated, the question of block booking was isolated from any other issue. In both cases the Federal Trade Commission held that there was not sufficient ground to warrant the Commission in taking any action.

It should further be observed that the problem of blind booking is not an essential part of this case. Pictures may be sold in blocks irrespective of whether or not an exhibitor has had an opportunity to view the pictures before buying them.

The arguments both for and against block booking are outlined in the case and need not be repeated. It may be worth while, however, to call attention to certain of these arguments. The contention that block booking is wholesaling as applied to the sale of motion pictures is probably sound. On the assumption that the discount offered because of block purchasing bears a definite relation to the saving in the costs resulting from such block purchases, the practice is quite similar to that followed in many other lines of business. That such savings do appear seems clearly established. The practice of offering a lower price for quantity buying cannot be entirely divorced from the question of who bears the risk of the industry. The exhibitor buys a given block of pictures, pays a lower price for them, and assumes the risk as to the box office value of the pictures. Undoubtedly this makes it possible for a distributor to include in a block poor pictures along with the good ones. That this makes it possible for him to secure a

larger income from those poorer pictures than he would otherwise be able to obtain is probably true. On the other hand, if the distributor sells a block of pictures under a brand name, good practice might dictate that the pictures in that group should be of as uniform a quality as possible. Unevenness in quality lowers their standing in the exhibitor market and is likely to make the brand name meaningless. Here again the situation is not entirely different from that in other industries. Not infrequently a manufacturer or a wholesaler may sell a case of assorted merchandise in which the quality is not uniform. He may frequently include in the case merchandise of distinctly lower character as a means of clearing his inventories of such merchandise. In both cases the price is lower than otherwise would be the consequence. That motion picture distributors unable to make every picture of consistent quality should follow the same practice is not surprising, nor is it in itself to be condemned.

It has been urged that the wholesaling argument does not apply here because, although the product may be of uniform quality, the individual items are not identical. To this assertion it may be replied that such a practice is not without its counterpart in other businesses. Thus magazines are sold in so-called "combination offers" in which not only do the publications themselves differ but the individual issues of any one magazine differ from each other.[24] Similarly, dry goods are sold in mixed cases, and women's dresses in mixed lots. Whether or not the method is sound, it is true that the motion picture industry does not appear to be distinctive in this regard.

The major argument against block booking seems to be that it limits the exhibitor's choice of pictures; it makes it impossible for him to select only the pictures which he considers to be good and to reject those which he thinks have little box office value. That such restriction does occur seems apparent. Just how far it is undesirable is somewhat open to question. The cost of producing those inferior pictures which are the inevitable result of any production plan must be borne in some manner and by some one. If such pictures are included in a block and forced upon the exhibitor, the price of the block should be lower in consequence. If not included in the block, they then would not be sold so generally, but the price paid by the exhibitor for his good pictures would have to be high enough to cover the losses on those of less merit. In any event, it is reasonable to assume that competition among the producers is keen enough to force each one to produce the best possible pictures for the money available. It is unreasonable to believe that a producer deliberately produces poor pictures. It must further be remembered that the independent exhibitor has the opportunity to choose between various blocks of pictures.

[24] Incidentally, it may be noted that this is also a case of blind buying.

If an exhibitor is to exercise the privilege of selecting only the good pictures from a distributor's offerings, he should naturally expect to pay a substantially higher price for that privilege. Here, again, there is a parallel in other fields. Retailers selling women's dresses can select the best in quality and the latest in style only by paying the top price for them, and by charging proportionately more to the limited clientele that can afford such merchandise. There is a place for such exclusive shops, but most stores cannot operate on that basis.

A serious argument is advanced against block booking to the effect that the practice results in an undue preemption of an exhibitor's available screen time. Undoubtedly, the total number of hours available for exhibition is distinctly limited for any one exhibitor. If one distributor can sell a block of pictures that will occupy one-half of that time, obviously that period cannot be used for the showing of the pictures of any other distributor. However, any retailer has a limit to the total amount of merchandise he can buy, as well as to the number of different brands of any one item that he can carry. There is a greater measure of elasticity for him, perhaps, but a real limit exists, nevertheless; and the difference between such a merchant and a motion picture exhibitor is, therefore, but one of degree.

The reasoning in the case would, in any event, be influenced by the company's policy in the matter of requiring an exhibitor to purchase all pictures in a given block as an alternative to obtaining any of them. The evidence seems to indicate that a salesman did exert considerable pressure in an attempt to obtain an order for an entire block of pictures. This was as might be expected. The evidence would also suggest that in the majority of instances a distributor would accept a contract for part of a block rather than lose the order altogether.

On the whole, it would appear that the particular practice under consideration has a parallel in other lines of business and is, in essence, a sound policy for motion picture distributors to follow.

November, 1929 H. T. L.

Bagdad Pictures Corporation[1]

PRODUCER AND DISTRIBUTOR—MOTION PICTURES

UNIT OF SALE—*Individual Selling Substituted for Block Booking with Unsatisfactory Results.* A corporation producing and distributing motion pictures, which it had been selling in blocks in advance of production, decided to comply with the requests of some exhibitors and also to meet the criticism of the Federal Trade Commission by selling its pictures individually, believing this practice would increase its gross income. Since competitors continued to sell their pictures in blocks, however, the company's salesmen found it impossible to sell to many exhibitors, who, wishing to assure themselves of an adequate supply of films, had purchased all or a large part of their requirements from competitors before the company's salesmen visited them. The result was a large decrease in revenue and a decision to return to the more economical block booking method.

(1923–1924)

Prior to 1923 the Bagdad Pictures Corporation, one of the largest producers and distributors of high-grade motion pictures in the United States, had been selling its annual production of pictures under the block booking method. In 1923, believing that the company might not be deriving the utmost in profit from its pictures under the existing method of selling, executives of the company proposed that it attempt to sell its pictures during the 1923–1924 season on an individual basis and only after they had been completed and made ready for a trade showing. A further reason for adopting this method of selling was that it might allay some of the agitation on the part of exhibitors that had arisen during the previous two years against the practice of block booking and against the practice of selling pictures before their production had been completed. The Federal Trade Commission had instituted an investigation of the practice of block booking in 1923.[2]

In 1919, when the company had been releasing its pictures in star series, that is, in short series each one of which contained

[1] Fictitious name.

[2] Considerable testimony was taken by the Federal Trade Commission in this investigation but no action was taken until 1927. See Federal Trade Commission *v.* Famous Players-Lasky Corporation, *et al.*, page 226.

the pictures of only one star, an attempt had been made to sell the 10 best pictures of the year individually while the others were sold in star series as before. Exhibitors were given no opportunity to see the pictures before they made their purchases. According to executives of the distribution department, the experiment proved a failure before the year was out, because the salesmen could not cover the territory as fast as competing salesmen who were not selling individually and because the exhibitors wanted to buy their pictures in blocks in advance to assure themselves of a steady program. Between 1919 and 1923 no attempt was made to sell pictures individually.

In 1923 a majority of distributors in the United States were selling their pictures in blocks. This practice had developed with the industry from the days of the earliest motion picture theaters when all pictures were short stories, full of melodrama and action and uniformly one reel in length. In those days pictures were not sold individually; they were sold as a service of so many reels of film per week. No exhibitor knew in advance what pictures would be delivered. As better and longer pictures were made and a more carefully organized distributing system developed, the service plan was changed gradually until in 1923 feature pictures were sold generally in blocks of from 10 to 30 pictures each. An exhibitor purchasing a block of 30 pictures usually signed the purchase contract before the pictures had been made, although he was told the names of most of the pictures and something of the stories. Distributors tried to sell to each exhibitor their entire blocks of pictures as offered. This method of selling guaranteed the distributors a definite minimum income from their pictures as soon as the sales contracts were signed. It enabled the exhibitors to plan their programs in advance with the assurance that they would have sufficient pictures. Many exhibitors had complained, however, that distributors' salesmen sometimes refused to sell them any pictures unless they agreed to take the entire block as offered, whether all the pictures in it were suited to their types of audiences or not.[3]

The Bagdad Pictures Corporation had been organized in 1916 and had built up a well-known producing and distributing organization. It produced between 60 and 80 feature pictures a

[3] For a more complete statement of the arguments for and against block booking see Federal Trade Commission *v.* Famous Players-Lasky Corporation, *et al.*, page 226.

year. Its distributing organization maintained exchanges in 38 cities in the United States and in 1922–1923 had employed a force of 174 salesmen to sell its product. Until 1917 the pictures produced by the company had been sold as a program of two pictures per week. From 1917 to 1920 the company released its pictures in star series.

In 1920 and 1921 the company had sold its pictures each year in three blocks, released during three different periods of the year. The first of these blocks contained pictures that would be released during August, September, and October and was sold to exhibitors in June and July. When the company's salesmen called on exhibitors to sell these pictures they did not attempt to sell the next quarter's product, since at that time it had not been announced by the production department. While the salesmen were selling the pictures to be released during August, September, and October the production department was perfecting its plans for the next block of pictures to be released during November, December, and January. The salesmen made their calls to sell these pictures during August, September, and October. The third block consisted of the pictures to be released during the last six months of the year. Each time a salesman called on an exhibitor he tried to sell the entire block he had to offer at that time.

In 1922–1923 the company had altered its release plan to two blocks a year. In that year it had released a block of 41 pictures during the first six months and a block of 39 during the last six months. The company had taken this action because it had found that competitors who were releasing their pictures in this way could sell all their productions of the first six months of the year while it was selling only its first quarter's pictures. As a result, the company frequently was unable to sell its second quarter's pictures to exhibitors who had bought its first quarter's pictures, because these exhibitors also had purchased the six months' program of a competitor and found their playing time fully occupied. The company's sales had been in satisfactory volume and had been increasing. In 1922–1923 its sales totaled $20,000,000. The company's executives, however, were always on the lookout for a means of increasing this figure.

The executives who favored the proposed plan of individual selling did so in the belief that it would increase the company's

gross income. The company had always concentrated on an effort to make pictures of high quality and its executives believed that its product was as good as any on the market. These men for some time had been of the opinion that, while block booking protected the company against reduced income and sometimes serious loss on its unsuccessful pictures, it did not enable the salesforce to derive the highest possible income from the better pictures. Only a small number of the company's pictures were unsuccessful; it was estimated in 1923 that less than 3% of the company's pictures had failed to return the cost of production. The executives, therefore, favored giving individual attention to each picture in the hope that each picture would bring a price proportionate to its worth. They also had in mind the possibility that the institution of a system of selling which permitted an exhibitor to preview a picture before he bought it and to buy each picture on an individual basis without regard to other pictures would answer the complaints of exhibitors and the possible criticism of the Federal Trade Commission. Exhibitors had complained against the system of selling which forced them to buy pictures before they had been made and often before the scenario and the name had been selected. They maintained that under these contracts of sale the distributors often delivered pictures which were not similar in any respect to the prospective pictures described in the sales contract.

When this plan of distribution was presented to the production department of the Bagdad Pictures Corporation it was received favorably. For some time the production department had been aware of the limitations placed upon its activities by the necessity, under the existing method of releasing pictures, of projecting its program several months into the future. In order to sell a large number of unmade pictures in a block, the distribution department had to secure from the production department several months in advance a description of each picture, its name, and that of the star performer, to enable it to draw up sales and advertising material and instructions. The production department found it difficult to follow fixed plans since it found it desirable to alter its pictures from time to time during the season to suit changes in public taste and to make the best use of the star actors under contract to whom high salaries were paid. When forced to plan its pictures several months in advance in order to furnish

the distribution department with information relating to the pictures, the production department claimed that it could not make as good pictures as when it could adjust its plans to changing conditions. Under the proposed plan of selling, which would require the production department to deliver approximately one picture per week but would not demand that it announce its plans in advance and abide by them, the production department believed that it could make every picture of high quality.

In the spring of 1923 the sales executives decided to adopt for the year 1923–1924 the revised plan of distribution. The proposal was to produce a smaller total number of pictures than formerly, all of which were to be of high quality, to be sold on an individual basis to exhibitors only after they had been completed and prints had been delivered to the exchanges. Thus the exhibitors could go to an exchange and see the pictures screened before they signed the purchase contracts if they so desired. The salesmen were not to attempt to sell each picture as soon as it was made, but were to call on exhibitors each time a sufficient number of pictures had been completed to make it worth while to make the call and try to sell as many pictures as possible. In making sales the salesmen were to discuss each picture separately and were not to cause the sale of any picture to depend upon the sale of any other. The pictures were to be priced individually. No discount was to be granted to those exhibitors who bought a large number of pictures.

It was decided that the company would release 47 feature pictures during the 1923–1924 season and market them in accordance with the proposed plan. The proposal was thoroughly advertised in the trade papers, with emphasis on the fact that the Bagdad Pictures Corporation had evolved a plan of selling which would eliminate the abuses cited by the exhibitors and which was the kind of selling the exhibitors had requested. At the sales convention in the spring of 1923 the plan was thoroughly explained to all members of the salesforce and all questions were answered. Salesmen were given complete instructions regarding the application of this new method of selling. In July the production department delivered to the exchanges completed prints of the first 12 pictures. The salesmen then went into the field and attempted to sell these 12 pictures, which the exhibitors could see before buying by making a visit to any one of the com-

pany's 38 exchanges. They offered each picture separately on its own merits. The distribution department executives stated that the pictures delivered during the 1923–1924 season were of slightly higher quality than those delivered during the previous season.

The salesmen experienced considerable difficulty in selling the pictures. The salesforces of other distributors had been in the field for at least two months and had made many sales. They had called on the exhibitors with the usual blocks of pictures and in accord with the general practice had sold to the large theaters first, leaving the smaller theaters until later in the year. Many exhibitors, in order to assure themselves of a complete program for the year, had purchased in blocks from these other distributors. These exhibitors believed that they could not afford to permit other distributors to sell pictures to competing exhibitors when they had no assurance that the Bagdad Pictures Corporation would produce enough pictures to satisfy their demand and, in the absence of a contract, no assurance that they and not their competitors would secure the pictures of that company when the pictures were released. In some cases exhibitors who had been using the company's pictures for several years had contracted with other distributors for enough pictures to fill their entire year's program.

The company's salesmen found that many exhibitors had not sufficient playing time left to permit them to buy the company's pictures and that many of those who did have remaining playing time had engaged other pictures for the first few months of the year so that they could not exhibit the company's pictures before January, 1924. One of the difficult problems of all distributors was to book their pictures for definite exhibition dates after the purchase contract had been signed. Every distributor wished its pictures to be played at as early a date as possible. Early exhibition enabled a distributor to realize its income on a picture in cash at an early date, gave the picture publicity which was of value to the distributor when making sales to other exhibitors, and also minimized the danger of cancellations, which always increased as an exhibitor delayed dating in a picture.

Before the second group of Bagdad pictures was released it became apparent to the executives that this method of selling was not going to prove entirely successful. Selling expenses

were not reduced, and the monthly income statement was falling behind that of the previous year. Fearing that the company would be unable to bring the income up to normal during the year, the executives decided to reduce expenditures to maintain a margin between income and expense. A reduction of about 25% was made in the personnel of all departments, and corresponding reductions were made in outside expenditures wherever possible. The home office force was reduced and a reduction was made in the staff at the production center in Hollywood. The salesforce had been composed of 192 men in August, 1923. For the balance of the 1923–1924 selling season it contained approximately 100 men. In June, 1924, there were 105 salesmen and exchange managers on the payroll. The company estimated that it cost on an average of $115 per week, including salary and normal expenses, to maintain a salesman. Forty exploitation men who had been engaged in assisting the exhibitors to find novel ways of exploiting the company's pictures were eliminated from the company's employ entirely. In October the advertising appropriation was reduced by half. The sales manager approved the dismissal of almost half of his salesforce, in the belief that under the existing plan of selling many exhibitors would come to the exchanges to preview pictures and that pictures could be sold to them at that time by the exchange manager without the necessity of a trip to the theater.

About two months after the first group of 12 completed pictures had been released to the salesmen another group of 18 pictures was completed. The salesmen found it still more difficult to sell these pictures, although they were of equally high quality. Salesmen of other companies had been selling since June with practically a year's offering of pictures and by that time were about three months ahead of the company's salesmen.

After these two attempts to sell the 1923–1924 pictures it was apparent to the company's sales executives that they could not sell the company's product successfully by this method. Many long-standing users of Bagdad pictures, some of whom had spent large sums of money advertising that they had the exclusive right to show the company's pictures in their neighborhoods, criticized the plan by word of mouth to the salesmen and by letter to the New York office, stating that since they were unable to contract for their year's productions in advance as they had in the past

they could not assure themselves of a continuous program without buying competing pictures. That exhibitors bought other pictures in blocks instead of Bagdad pictures which were of equal or better quality and were being offered for sale on an individual basis was interpreted by the company's executives as indicating that exhibitors preferred block booking despite their published protests against it. Most of the exhibitors who did buy Bagdad Pictures in 1923–1924 were of the opinion that they were paying higher prices for pictures than they had paid when they were buying from the Bagdad Pictures Corporation in blocks. Although prints of the pictures being sold were available at all exchanges for preview, but few exhibitors took advantage of the opportunity. They either could not or would not take the necessary time. When the company's salesmen found it possible to make a sale they generally found, as they had when selling the first group, that the exhibitor already had bought so many other pictures that he was unable to book Bagdad pictures until a very late date. Because of the refusal of the exhibitors to call at the exchanges to observe previews, the company found that it needed more salesmen than it had anticipated to cover the field effectively. It was also foreseen that the gross revenue for each picture would be less than it had been in the years just before 1923.

In December, when these conditions and results became apparent to the sales executives, they quickly assembled the specifications of the remaining 17 pictures, which had not at that time been delivered by the production department, sent the material to the salesmen and instructed them to sell these pictures in a block before they were made, as they had in the past. For the balance of the year sales were made either singly or in blocks according to the exhibitors' desire. By the time this action was taken the selling season was so far advanced and so many of the more important theaters had secured their requirements from competitors of the Bagdad Pictures Corporation that it was impossible to bring the sales volume up to its former level. For the 1923–1924 season sales dropped off about 25%.

Relative gross sales for the period from 1921 to 1925 are indicated by the following figures based on the gross sales for 1921–1922 as 100:

1921–1922	100
1922–1923	130
1923–1924	90
1924–1925*	150

* In 1924–1925 the company sold its pictures in blocks before they were made. It released 80 pictures in 2 blocks of 40 each.

Inasmuch as the New York office was operating in 1923–1924 with a reduced staff, the statistical department did not continue preparing the usual weekly reports of product sold. However, the records did reveal the information contained in the following table:

FILM RENTALS EARNED IN THE UNITED STATES BY THE PICTURES OF GROUPS 6, 7 AND 8 (SEASONS 1922–23, 1923–24, AND 1924–25, RESPECTIVELY) DURING THE FIRST SIX MONTHS AFTER THEY WERE RELEASED, EXPRESSED IN TERMS OF % OF THE ULTIMATE GROSS REVENUE OF GROUP 6

	Group 6 Season 1922–1923	Group 7 Season 1923–1924	Group 8 Season 1924–1925
Through the first August after release	2.35	1.22	7.40
" " " September " "	8.42	7.88	16.12
" " " October " "	13.86	11.13	25.17
" " " November " "	22.22	15.73	36.59
" " " December " "	28.66	19.21	46.58
" " " January " "	35.73	23.10	53.97
Estimated ultimate gross revenue	100.00	69.00	122.80

The ratio of selling expenses to gross income received is shown for six months by the following table:

RATIO OF OPERATING SALES COST

Year	1st 6-mos.	2nd 6-mos.
1922	19.04	19.14
1923	20.67	24.61
1924	24.41	19.00
1925	25.25	21.97
1926	24.26	23.15
1927	19.94	18.6
1928	17.00	

COMMENTARY:[4] This case describes an attempt on the part of a large distributor to sell pictures on an individual basis, an experiment which apparently was a failure. The object of the experiment was to obtain the highest possible returns from each picture; it was for this purpose that percentage pricing was subsequently experimented with by motion picture distributors. The company was willing to assume the risk of smaller returns on inferior pictures, perhaps in a belief that its record of successes minimized such a risk. The experiment, further,

[4] See also commentary on Federal Trade Commission *v.* Famous Players-Lasky Corporation, *et al.*, page 260.

evidently resulted in substantially fewer substitutions and cancellations. It also enabled the company to readjust its production plan in accordance with current developments.

The cause of the failure of the experiment is probably to be found partly in the excessive selling cost. It also was extremely difficult for the Bagdad Pictures Corporation to follow a policy of individual selling when its major competitors were still resorting to block booking. At the same time, the experience of the Bagdad Pictures Corporation furnishes another illustration of the difficulty of marketing a product contrary to the established buying habits of purchasers. Such innovations are by no means impossible and are at times very desirable, but they should be undertaken only with great caution and after careful analysis. It would appear that in the present instance the change proposed was too radical to succeed. The case indicates that when the salesmen for the corporation called on the exhibitors the second or third time, they found that the playing time of the exhibitors had been largely preempted by competitors. Obviously, this fact automatically barred the Bagdad Pictures Corporation from making sales later on in the season. Either of these factors would have been sufficient to compel the company to modify its policy. A part of the experience of this company has a direct bearing upon the general policy of block booking as presented in the history of other motion picture distributors.

November, 1929 H. T. L.

Universal Pictures Corporation

PRODUCER AND DISTRIBUTOR—MOTION PICTURES

Unit of Sale—*Complete Program Service Provided under Single Contract.* A corporation producing and distributing motion pictures, in some cases, particularly when selling to small exhibitors, sold its pictures as a complete program for a year or shorter length of time, under a single contract. The company was faced with possible changes in its distribution plan which might be necessitated by the objection of the Federal Trade Commission to block booking as practiced by some companies. The corporation explained its method of operation, however, as being what the majority of exhibitors wanted, and showed that the costs of distributing pictures as individual units to most of the rural theaters would be prohibitive.

(1927)

The Universal Pictures Corporation produced and distributed a sufficient variety of motion pictures to serve the needs of all classes of theaters and to provide a complete program for any theater. In order to sell its pictures more easily to a greater number of individual exhibitors than otherwise would be possible, and to enable the small exhibitor to secure pictures that otherwise would not be available to him at the price he was able to pay, the company sold its pictures to its customers among the small theaters of suburban or rural districts and to some of its larger customers under the Universal Complete Service Plan, by the terms of which a sufficient number of pictures were sold under one contract to furnish a theater with a complete program for a specified length of time.

Under this plan the company's pictures were sold in a block from a descriptive list. No opportunity was given an exhibitor to preview the pictures before he signed the contract. In 1927, at the conclusion of a lengthy investigation of the selling methods of the Famous Players-Lasky Corporation and certain of its subsidiaries, the Federal Trade Commission ordered that company to cease and desist from the practice of block booking and blind booking.[1] Both of these practices were common in the industry.

[1] See Federal Trade Commission *v.* Famous Players-Lasky Corporation, *et al.*, page 226.

Should this order be enforced against all motion picture producers the Universal Pictures Corporation would be compelled to abolish its Complete Service Plan and to seek, as a satisfactory means of distributing its pictures to small theaters, some method which would not be dependent upon block booking or blind booking.

The following explanation of the Universal Complete Service Plan was made by one of the executives of the company's sales department.[2]

This contract is the means of keeping many small exhibitors in business. How many actually are able to keep open and make a small profit as a result of Universal's generous terms is hard to estimate. They run close to a thousand, no doubt. Thousands of other complete service users are enabled to make a fair or good profit who otherwise might be running on the ragged edge of profit and loss.

Complete service was originated by Lou B. Metzger, now general sales manager for Universal. The service was created with the small town in mind, although it has been extended to include larger cities and big houses.

The elements of the service are as follows: For a specified weekly rental, generally for a period of 52 continuous weeks, Universal undertakes to supply the exhibitor with a complete program, including a feature picture, and such short subjects as he may need. He gets the pick of the entire Universal line-up, except for the current super-productions, the International Newsreel and the current releases of the Collegians series. And the weekly rental is surprisingly low, being in most cases only a slight increase over what the exhibitor formerly paid for a feature alone.

The plan has been in existence four years, having been started with the Universal product of the 1924–1925 season. Complete Service Contracts for the 1927–1928 season, for instance, include all productions now being released except "The Cat and the Canary," "Les Miserables," "Love Me and the World is Mine," and "The Cohens and the Kellys in Paris," the International Newsreel, the Second Collegians, and "The Hunchback of Notre Dame" and "The Phantom of the Opera."[3]

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[2] *Film Daily*, March 28, 1928, quoting Ben Y. Cammack, Sales Manager for Complete Service, Universal Pictures Corporation.

[3] The International Newsreel was produced by the International Newsreel Corporation and distributed by the Universal Pictures Corporation under a contract. It was therefore not included in the Universal Complete Service Plan. The other productions named in this paragraph were superspecials released by the company during 1927–28 and were not included in the Universal Complete Service Plan offering until the following year. During 1927–28 they were being shown by the large metropolitan theaters which paid the company large rentals for their use. Small exhibitors were able to pay only moderate rentals for the use of films and usually were unable to secure the high-class films for exhibition until a year or so after their release.

The current Complete Service Contract embraces a total of 67 features and a large number of short comedies, specialties, and serials.

These pictures become available to the exhibitor as soon after release date as the factors ordinarily affecting his case permit. This varies from a few weeks to as many months, just as in ordinary booking situations. Whether he plays the picture one, two or three days has little or no bearing on the subject, although it might make a slight difference in price under the original arrangements.

The normal service supplied to users of the Complete Service Plan includes one feature a week and whatever short subjects the exhibitor needs to round out his program. In addition to the one feature a week, the exhibitor may, if he so chooses, take all of the short product, or a total varying from seven to twelve reels of shorts. In many cases, this privilege has enabled exhibitors to add an extra day to their showings, using, say, three reels of shorts with the feature, and using the remaining short reels for a special mid-week all-short subject show.

The exhibitor does not have to use a feature regularly every week. He may let them pile up on him and run several the same week, depending upon film routing conditions. The only restriction is that he is not entitled to play back features after the culminating date of the contract.

The proof of the value of this service is indicated by the fact that most of the current users of Complete Service have signed up year after year. Naturally all of them are now using last year's complete service list. Still others are a year behind that. The Complete Service Plan has enabled many exhibitors to come a year or more closer to release date than their rental possibilities ever permitted before.

As aforementioned, the weekly rental for Universal's Complete Service is surprisingly low. Universal was able to cut down on the rental because of the saving in selling, booking, and handling of the vast number of pictures involved. The price is determined to a great extent by the same factors that go into any price arrangement, the theater, the town, and the length of run and the time after release date, whether first, second or subsequent run, all going into a determination of a fair weekly rental basis. The final results, however, practically mean that the exhibitor gets a handsome reduction over former prices on his feature and gets his short subjects at a very low minimum. The short subjects angle of the situation has many aspects. One of the most important has been the ability of the little man to add variety to his program because of the wide selection of one- and two-reel pictures made available to him. This has built up the entertainment value of his show and made for pyramided box-office results. It has also been a weapon in the hands of the small man in his fight against vaudeville and other extraneous entertainment.

The price paid by the users of the Universal Complete Service varied from as low as $9 per week paid by some of the smallest rural theaters to as high as $200 per week. Many small theaters

were paying from $15 to $20 per week. One chain of theaters was paying $2,000 per week for the service. Exhibit 1 illustrates the prices paid by some of the small theaters.

EXHIBIT 1

ACTIVE COMPLETE SERVICE CONTRACTS, STATE OF IDAHO,* 1927–1928

Town	Population	Theater	Price† Per Week	Number of Weeks
Ririe	300	Ririe	$11.00	56
Rockland	344	Iris	10.00	33
Twin Falls	8,324	Idaho	50.00	54
Leadore	200	Opera House	9.00	60
Spencer	104	Beaver	25.00	52
Bonners Ferry	1,070	Rex	15.00	65
Elk River	650	"	13.62	101
Orofino	500	"	16.00	53
Priest River	750	"	12.50	52
Spirit Lake	600	Cosy	16.28	59
Tensed	150	Pastime	9.78	65

* Report of hearing on the Brookhart bill before the Committee on Interstate Commerce, United States Senate, page 276.

† In interpreting the prices indicated in this table it must be borne in mind that the theaters listed were among the smallest in the United States. It also should be remembered that some of the theaters were open only one night a week while others were open two or three nights and some operated seven days a week. The number of showings per week would have some effect upon the price paid for the service.

The contract provided for the selection of films by the exhibitor in the following words:

> Commencing on the ——— day of ———, 192—, the exhibitor shall have the right to select from time to time, as herein provided, from the pictures specified in this schedule, the motion picture or motion pictures to be exhibited by him in the theater until all of the motion pictures designated in this schedule shall have been exhibited in the said theater or until the expiration of the term of this contract, subject, however, to the following conditions:
>
> (a) No more than one feature picture nor more than nine (9) reels of short product may be selected by the exhibitor for exhibition in the theater in any one week (except as provided in paragraph D hereof.)
>
> (b) No print received by the exhibitor from the distributor hereunder shall be exhibited or displayed in the theater on more than ——— days.
>
> . . . . .
>
> D. If at any time the number of weekly payments theretofore made by the exhibitor shall exceed the number of feature pictures or short subject programs theretofore exhibited by the exhibitor

in the theater, the exhibitor shall have the right to select and to call upon the distributor to furnish more than one feature picture or short subject program per week until the number of feature pictures or short subject programs exhibited by the exhibitor shall equal the number of weekly payments made to the distributor.

Executives of the Universal Pictures Corporation made the following statements about the Universal Complete Service Plan when testifying before the Committee on Interstate Commerce of the United States Senate at the hearing on the Brookhart bill held from February 27, 1928 to March 2, 1928:

We do what all companies do, we try to sell everything we possibly can. We devised this Universal complete service contract. This plan was obviously wholesale selling and was greeted nationally favorably by thousands of small-town independent exhibitors. The first year that we put it into effect we had letters or telegrams from something like 900 different exhibitors to the effect that on account of this plan they could open their theaters one more day a week than ever before under any other plan. Since the time of the inauguration of this plan, the Universal Company has sold 11,500 of these contracts to date, and at the present time there are 3,172 such contracts in service.

By this wholesale method of selling a great many exhibitors were enabled to open up theaters in smaller communities which had theretofore been closed, because of the fact that the Universal Company make a varied line of products, amounting to approximately 425 individual subjects per year. This afforded the exhibitor a variety of service which enabled him to give one or two complete shows per week to his community.

It has been the exhibitor's option whether he wanted to buy this form of contract or not. We have never gone to a customer and demanded that he buy our pictures under this form of service. It has been his privilege to buy our product this way on a weekly payment basis or on the straight form of selling used by all companies, where he could contract for our pictures in individual groups at individual prices if it pleased him to do so.

We do not mean to say that before the inauguration of the complete service plan we did not sell the exhibitor wholesale, for it is a fact that it has always been the practice of my company to cater to the small-town exhibitor, and I can't, to my certain knowledge, think of a time when we were not willing to offer him our product on a wholesale basis; nor can I think of a time when we have ever refused to sell an exhibitor film providing[4] he didn't buy 100 per cent of everything.

The Universal Complete Service Plan of distributing pictures to the small exhibitors first had appealed to the executives of the

[4] Witness apparently intended to say "because" and not "providing."

company as a means of deriving additional revenue from the many pictures on the shelves of the company which had not reached many of the small theaters because of the prohibitive costs of distribution. This plan, which provided for the sale of a complete line of pictures for a year in one contract, so reduced the cost of selling as to make it profitable to serve the smallest theater. It made it necessary to call on each exhibitor only once or twice a year.

> It is not hard to understand that if a company is making 425 units of service that we could not possibly exist if we had to sell each unit or each five units on individual contracts; . . . We would naturally have to add onto these small-town contracts the increased cost of selling made necessary through having to employ a much larger salesforce than we now use . . . [5]

Mr. Charles C. Pettijohn, general counsel for the Motion Picture Producers and Distributors of America, Incorporated, of which association the Universal Pictures Corporation was a member, in his testimony at the hearing on the Brookhart bill showed the cost to the average distributor of making a sample sale.

> Mr. Pettijohn. I want to take some concrete figures. An ordinary everyday salesman would probably get $60 a week, just an average salesman. Six working days would be $10 a day. Now, let us take him 50 miles away to make a sale, if he makes one, and we will say his transportation is $2. That makes $12. One meal and any other little incidentals amount to $1. That is $13. For the local overhead of the exchange out of which he works, where is his manager and shipping department, etc., say $2. His legitimate share of his home office expenses, $1. That gives you a total of $16, and I have not packed my film and shipped it yet, and Mr. Kent will explain to you how it costs $4.50 to make a shipment of his product.
>
> But just take $16 to make the sale. Under present conditions, distribution costs have been reduced from 35% to about 25%. It has been our job to reduce distribution costs. We have reduced them largely by avoiding lawsuits and hiring of a lot of lawyers.
>
> The Chairman. How many of these salesmen are there?
>
> Mr. Pettijohn. In the United States I should say, as a rough guess, between 2,000 and 3,000. They all travel, and they

[5] Testimony of the Universal Pictures Corporation at the hearing on the Brookhart bill.

always put everything in the expense account that ought to go there.

Now, figuring that $16 cost I have explained at the present price as being 25%, it is obvious that if I make my selling distribution cost 25%, $64 would be the minimum at which to sell one picture at a time.

The Universal Pictures Corporation, like other distributors, concentrated the efforts of its salesforce during the early part of the selling season on the large theaters, which returned high prices for the use of the films. Later in the season the salesmen called on the smaller exhibitors, who paid much lower prices. The price paid by exhibitors to distributors for the use of films was not uniform. It depended upon such factors as the size of the theater, the location of the theater, the age and the style of the building, the nature of the patronage, and the reputation of the theater in its town or city. On the one extreme Roxy's Theater on Broadway paid as high as $10,000 for the use of a film for a week, while on the other extreme small rural theaters paid as low as $7.50. It was estimated that the large theaters in metropolitan cities returned to the distributing companies over 75% of the total gross revenue earned on each picture. The additional 25% revenue to be derived from sales to the smaller theaters was essential to profitable operation but could be reached only if the cost of securing it was less than the revenue thus secured. As the revenue to be derived from a sale fell off it became less and less profitable to send salesmen to call. With the exception of the big first-run houses in New York and Chicago the selling cost for all theaters was said to be somewhat uniform.

COMMENTARY:[6] The attempt of the Universal Pictures Corporation to reach the small exhibitor by offering him complete service is to be commended. Undoubtedly it would be unprofitable for any distributor to send salesmen to a great many exhibitors where such exhibitors buy in small quantities and are able to pay only low prices. The policy of the Universal Pictures Corporation offered an important service to this class of exhibitors, making it possible for them to exercise some choice in the pictures they wished to run, at the same time guaranteeing them a supply of pictures and at a price within their ability to pay. That this service was appreciated is indicated by the fact that many

[6] See commentary on Federal Trade Commission *v.* Famous Players-Lasky Corporation, *et al.*, page 260.

such exhibitors contracted for service year after year. There appears in the case no reason for believing that the interests of such small exhibitors were in any way adversely affected.

This case should be compared with that of Puritan Films, Incorporated.[7]

November, 1929 H. T. L.

[7] See Puritan Films, Incorporated, page 319.

United Artists Corporation

DISTRIBUTOR—MOTION PICTURES

Marketing Organization—*Cooperative Distribution by Small Group of Producers.* A small group of leading motion picture artists organized a corporation to distribute the pictures of its members. Each member produced one or two pictures a year, to be sold individually, and the cost of distribution was consequently larger than that of the average distributor who sold pictures in large blocks or groups. Executives of the company believed, however, that if the high quality of the pictures was emphasized, exhibitors would be willing to buy a few such pictures at high prices for use as special attractions. The company charged a commission of 27½% of the gross earnings of each picture, keeping the accounts of each picture separate so that the individual artist received profits in proportion to his efforts and his popularity.

(1919)

The United Artists Corporation was organized in 1919 by a group of four leading members of the motion picture industry to distribute the motion pictures produced by them. These four persons—Mary Pickford, Charles Chaplin, Douglas Fairbanks, and D. W. Griffith—held the entire stock of the company. Each of them had established or planned to establish his own producing company to make the pictures which he was to direct or in which he was to enact the leading role. Between 1919 and 1928 four other persons were permitted to buy an interest in the company. They were Norma Talmadge, Gloria Swanson, Samuel Goldwyn, and Joseph M. Schenck, president of the United Artists Corporation.

It was decided that the newly organized company should confine its activities to the distribution of such pictures as the four producing companies should make. Each of the stars planned to make only one or two pictures each year and to make each picture of as high a quality as possible. They believed that their popularity with the public was sufficient to make each picture a financial success. The executives employed by the company sought a means of distribution which would be satisfactory to the several stockholders, to the company itself, and to the exhibitors who might buy the pictures.

At that time all distributors of motion pictures were selling the bulk of their pictures on a service basis. This method of selling was to offer to provide exhibitors with a regular weekly program of pictures throughout the year. The contract of sale simply set forth a number of undescribed pictures which would be delivered each week during the life of the contract. Later, distributors began to sell, for delivery during a definite period of time, groups of pictures which were specified by name and by the name of the star taking the leading role. This later practice was known as block booking.[1]

Prior to the formation of the United Artists Corporation all motion picture actors had been in the employ of producing companies. Hence the pictures in which they appeared were the property of those companies. The pictures in which a certain star carried the leading role were combined with others produced by the same company and sold in a single block. A few stars, notably Charles Chaplin and Mary Pickford, had risen to such great popularity that they believed that this practice limited their incomes to an amount incommensurate with their value to the companies employing them. This was especially true in the case of those pictures which earned unusual profits for the producing companies. Some of the stars tried to share in the profits by demanding contracts which stipulated that they should be paid for their services on the basis of an agreed percentage of the gross revenue earned by their pictures. Their pictures still were sold in blocks with other pictures.

When selling pictures in blocks, distributors commonly settled a price with an exhibitor for the entire block. This price then was somewhat arbitrarily allocated to each of the pictures in the block according to the distributors' estimate of their relative value to the exhibitor. The stars had found that this arrangement led to continual disagreement about the allocation of price. It was provided, therefore, in some of the contracts between the stars and the producing companies that the pictures in which those stars appeared be sold individually and separately from other pictures. This, at first, appeared to be a very equitable arrangement, but difficulties soon developed.

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[1] See Federal Trade Commission *v.* Famous Players-Lasky Corporation, *et al.*, page 226.

After some experience with such a contract with the Famous Players-Lasky Corporation, Mary Pickford alleged that although her contract provided that her pictures were to be sold separately from those of other stars they frequently were included in the same sale with other pictures. The officers of that company maintained that they were making honest endeavor to follow the terms of the agreement. There were occasions, however, when over-zealous salesmen would use the inclusion of certain Pickford pictures in a group of pictures not so desirable as the Pickford pictures were, for the purpose of inducing exhibitors to buy the entire group. Miss Pickford also claimed that her pictures frequently were sold to an old customer of the Famous Players-Lasky Corporation simply because he was an old customer when a competing exhibitor, perhaps one who was unwilling to buy the company's full line of pictures, was willing to pay a higher price for the Pickford pictures alone. Experiences similar to this and the belief that they could make greater profits from their pictures by distributing these pictures themselves, had led the four founders to organize the United Artists Corporation.

It was decided from the first that the company should be a distributing company only and that the individual stars should produce pictures independently and deliver them to the company for distribution after they were completed. The United Artists Corporation was to receive, for the performance of the services of a distributor, a stipulated percentage of the gross earnings of a picture. It was to make no advances to the producing stars against their pictures in process but was to make payment to them only out of actual receipts.

From experience in the distribution of other pictures, the executives and the stars drew an agreement between the stars and the company by which the company agreed to distribute all the pictures produced by the individual producing units for a commission of 27½% of the gross earnings of those pictures. In return for this commission, the United Artists Corporation was to perform all the services of distribution, including selling, advertising, booking of the pictures for definite exhibition dates, shipment of the films to exhibitors, inspection and repair of films, and collection of payments from exhibitors. The payment received from an exhibitor less the company's commission was to be paid to the producer three weeks after the exhibition of the

picture. The producers were to furnish the company a negative of each picture and 150 positive prints ready for use.

The total amount to be spent on advertising was to be determined at the beginning of each year by the company. This sum of money was to be expended in equal amounts on all the pictures to be distributed. If any star desired to obtain more advertising for his pictures than could be afforded by the budget assigned to them he was at liberty to expend his own money for advertising. The company offered the services of its advertising department to any of the stars who wished to do additional advertising at their own expense.

In deciding upon its distribution policy the United Artists Corporation faced a different problem from that of any other large distributing company. Other companies sold a considerable number of pictures. This company expected to sell only five or six each year. Other companies sold the pictures of only one producing company, with which they generally were allied. This company planned to sell pictures made by four different producers.

One of the principal arguments in favor of selling pictures in blocks had been that such a practice reduced the cost of distribution per picture. If a salesman was able to sell an exhibitor 30 or 40 pictures at one call, the cost of selling each picture would be much lower than if the same salesman was able to offer and sell only one or two pictures. The executives of the United Artists Corporation were of the opinion, however, that they could establish an efficient selling organization which could operate at a profit even though it had only a few pictures to sell each year. They also believed that the higher prices which they confidently expected to obtain by this method of sale would compensate for possible excessive costs of distribution.

The stars who formed the company and the executives of the company all were agreed that its policy should be to sell its pictures individually. One of the principal reasons for this decision was that only this method of sale would permit an equitable division of the receipts from the sales of the pictures. If the pictures were sold individually the company always would know the exact amount earned by each picture. No arbitrary division of the receipts would be necessary, as would be the case if the pictures were sold in groups.

Another reason for selling individually was that such sale permitted special stress on the merits of the individual pictures and might enable the company to obtain higher prices for pictures of a given quality than it otherwise might obtain. Inasmuch as the company planned to make only a few pictures each year and to attempt to make them of high quality, this factor was of considerable importance. It was believed that exhibitors would more readily recognize the pictures as being of unusual quality and be more willing to pay higher prices for them if they were advertised and sold one at a time with special emphasis on their merits. When pictures were sold in blocks, it was sometimes possible to impress upon the exhibitors the high quality of the block as a whole but not so easy to present individual pictures in the block as outstanding box office attractions.

The action of a few distributors, even as early as 1919, in withdrawing an outstanding picture from the group in which it had been included and selling it as a single picture indicated that other people in a position to pass judgment believed that more money could be obtained for unusually fine pictures if they were sold individually. The decision of the United Artists Corporation later was justified by the increasing tendency for large distributors to sell on an individual basis a few of their best-quality pictures each year.

It was apparent to the executives, furthermore, that some exhibitors were dissatisfied with the method of sale common to many distributors which required them to select pictures by groups rather than individually. Many exhibitors were of the opinion that this method forced them to buy pictures which they otherwise would not have selected to be shown on their screens. Some of them were agitating for the adoption of individual picture selling by all distributors. The executives believed, therefore, that they could capitalize on this feeling of dissatisfaction and secure the goodwill of large numbers of exhibitors by adopting a method of selling satisfactorily to those exhibitors who opposed block booking. The company adopted for its pictures the slogan, "Sold individually on their merit."

In the opinion of the founders of the company, even those exhibitors who did not oppose block booking would welcome this method of sale. While most exhibitors at that time bought in large groups enough pictures to constitute the majority of their

programs, they filled in the rest of their programs by buying smaller groups or individual pictures. The company believed exhibitors would be glad of the opportunity to buy a few pictures of unusually high quality for use as special attractions and would be willing to pay a high price for them.

The policy of selling pictures individually was adopted by the United Artists Corporation. In 1919 the company released four pictures. During the period from 1919 to 1928 it released 81 pictures. In the 1928–1929 season, the United Artists Corporation released 16 pictures. They generally were conceded to be of unusual merit. The company found that many exhibitors welcomed the new method of sale and that it was able to sell its pictures in competition with companies having more pictures to sell which were sold in blocks. It sold its pictures to all classes of theaters in all parts of the United States and the world. It obtained satisfactory prices which it believed to be higher per picture than those received by competitors. From 1919 to 1928 the company's average gross receipts from the sale of pictures were $15,000,000 per year. The total cost of distribution during that period averaged 22% of the total gross revenue. In 1928 the cost of distribution was 21½% of gross revenue.

COMMENTARY:[2] This case suggests that there was evidently some criticism of block booking even on the part of actors and actresses. Miss Pickford indicated that her pictures were not sold separately from those of other stars as she had been led to believe they were to be. There were also occasions when the Pickford pictures were used as a means of selling other less desirable pictures and, further, her pictures were not always sold at as high a price as could have been obtained for them. Her attitude doubtless expressed that of certain other artists. It was this attitude that led to their withdrawal from previously established companies and to the organization of the United Artists Corporation.

The success of the United Artists Corporation is to be attributed somewhat to the peculiar character of the company. It made but a limited number of pictures per year. This in itself would make block booking difficult. These pictures, moreover, were sold at a price substantially above that charged by any other distributor for his pictures; hence, the company could afford to establish its own exchanges for distribution purposes. It may be noted also that the number of

[2] See commentary on Federal Trade Commission *v.* Famous Players-Lasky Corporation, *et al.*, page 260.

pictures made by the United Artists Corporation has tended to increase year by year. Another possible explanation for the success of United Artists pictures is to be found in the fact that all the actors and actresses connected with it apparently appreciated the importance of allowing a sufficient interval of time to elapse between their pictures so that the public's appetite would be whetted for a new picture.

The United Artists Corporation was clearly organized to meet the peculiar problems arising from an unusual situation. It, therefore, could adopt a method of individual selling when for other companies the same policy might prove quite unsuccessful.

November, 1929 H. T. L.

World Wide Pictures, Incorporated

distributor—motion pictures

Unit of Sale—*Individual Selling in Preference to Group Selling.* A company organized to import and distribute motion pictures produced in foreign countries faced the problem of whether the pictures should be sold individually or in groups. The company decided to sell the pictures individually, because many exhibitors were opposed to block booking, because many were prejudiced against foreign pictures and would refuse to buy them until they had been demonstrated individually, and because most exhibitors were interested in buying only a few foreign pictures each year.

Pricing—*Rate on Foreign Pictures Determined by Test Exhibits.* A company importing and distributing motion pictures produced in foreign countries decided to fix the price of each picture on the basis of a series of test exhibits in the vicinity of New York City.

(1928)

World Wide Pictures, Incorporated, was organized in 1928 to import and lease for exhibition in the United States and Canada motion pictures made in foreign countries. It planned to import from 40 to 50 pictures each year. It had entered into agreements with several European producers to distribute some of their pictures in the United States and Canada; as compensation it was to receive a commission of 40% of the gross receipts. These agreements permitted the company to select only the pictures it desired for its market and did not require it to take any if it did not wish to do so. The company's executives were concerned with the problem of deciding what method of offering and pricing the company's pictures would be best suited to its needs.

The company planned to maintain its own salesforce but not to handle the physical distribution of its films. It entered into an agreement with Educational Film Exchanges, Incorporated, by the terms of which that company was to distribute through its 36 exchanges in the United States and Canada the films imported by World Wide Pictures, Incorporated. The company planned to establish its own sales offices in the cities in which the exchanges of Educational Film Exchanges, Incorporated,

were situated. From these sales offices its force of approximately 100 salesmen was to operate, selling the pictures which would be delivered by Educational Film Exchanges, Incorporated.

At that time two methods of offering motion pictures for sale were in general use in the United States. One, known as block booking, was used more widely than the other. A distributor using the block booking method generally offered an exhibitor a group of from 10 to 50 pictures in one block and quoted a price for the entire block. Some exhibitors alleged that certain distributors forced them either to purchase the entire block as offered or take none. Usually, under this method of distribution, pictures were offered to exhibitors before they were actually produced. In such cases the contract of sale merely listed the names of the pictures and the names of the stars cast in the leading roles.

The other method was to sell each picture individually as a separate unit. Ordinarily when this method was used the pictures were not sold until they were completed. The only large distributor that offered its pictures on an individual basis was the United Artists Corporation.[1] It distributed about nine pictures a year. Almost all other distributors offered their pictures in blocks.

World Wide Pictures, Incorporated, might, for several reasons, have favored block booking as an appropriate method of sale. The fact that most other distributors were offering their pictures in that way indicated that most sales executives in the industry considered it a more satisfactory method of sale than individual selling. From the experiences of other companies it was reasonable to assume that if the company sold its pictures in blocks it would be able to distribute them at a lower cost per picture than if it sold them individually. As proof of this assumption, the companies which were selling in blocks offered the argument that a salesman having a block of from 10 to 50 pictures to sell at one call obviously could make his sales at a lower cost per picture than a salesman having only one or two. The Famous Players-Lasky Corporation, which usually sold its pictures in blocks, had attempted to sell them individually in 1919 and again in 1923. One of its executives, in testifying before the Federal Trade Commission in the case of *Federal Trade Commission* v. *Famous Players-Lasky Corporation*, stated that in each of these

[1] See United Artists Corporation, page 281.

two experiments the cost of selling had increased to a prohibitive figure.[2] The number of pictures which World Wide Pictures, Incorporated, planned to distribute each year was large enough to permit it to take advantage of the economies of block booking.

The executives of the company, however, considered the block booking method of sale fundamentally unsound. They did not believe any distributor should adopt a method of sale which forced an exhibitor to buy pictures before they were completed, or which required him to buy pictures in groups. In their opinion no one could accurately determine the type of a picture or its qualities from the name alone or from the brief description available before its completion. To force an exhibitor to purchase from such descriptions, therefore, would lead to his purchase of some pictures which were not suitable to his audience. A sales method which required exhibitors to buy pictures in groups also failed to take account of the different tastes of the people of different communities. While the group of pictures offered by a distributor might be composed of pictures satisfactory to one community, it was possible that they would not be acceptable to another community.

Another reason for the executives' opposition to block booking was that it permitted the inclusion of pictures of poor quality in a group of better pictures. An exhibitor wishing to obtain the good pictures in a block might agree to buy the entire block and find, after all the pictures were completed, that a number of them were of mediocre quality. Furthermore, block booking, by permitting such inclusion, removed the necessity for producers to make each picture of as high quality as possible. As long as a producer could sell his pictures in a block, he knew that he would have an assured minimum income on all the pictures regardless of their quality. Consequently, he found it possible to include in his program, without diminution of his income, a number of pictures on which the proper amount of care in production had not been exercised.

The executives of World Wide Pictures, Incorporated, also were opposed to block booking as a possible method of sale because during the two or three years prior to 1928 many exhibitors in all parts of the United States had voiced their opposition to block

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[2] See Respondent's brief in case of Federal Trade Commission *v.* Famous Players-Lasky Corporation, *et al.*, page 236.

booking. In some instances definite open agitation against the practice had developed among exhibitors.

In favoring individual selling the executives had several other considerations in mind. In the first place, the company was selling a product against which many exhibitors had developed a definite prejudice, for the reason that they had lost money on most of the foreign pictures they had shown. American audiences had not responded favorably to the exhibition of foreign pictures of the type that had been imported in the past. The executives believed that the only way of overcoming this prejudice was to demonstrate individually each picture which it hoped to sell and then sell that picture alone on the basis of the demonstration.

Another reason for selling on an individual basis was that most exhibitors were interested in showing only a few foreign pictures a year. Most exhibitors built up a season of picture programs from pictures made in the United States. These pictures were of the type familiar to their audiences, contained popular stars, and had enjoyed considerable publicity ever since their production had commenced. They were of the type that the exhibitors knew appealed to American audiences. After an exhibitor had built up a large part of his program with pictures of this sort he had only limited room for other pictures. It was believed, however, that he probably would be willing to buy a few novel and unusual pictures for the remainder of his programs.

The executives of World Wide Pictures, Incorporated, were convinced that exhibitors would want to buy a few foreign pictures after they had been shown that such pictures had drawing power and that, in the course of a few years, as foreign brands of pictures became better known, there would be a steady demand for them by American audiences. The executives believed that if the company offered the pictures individually it would be able to obtain higher prices for them after they became firmly established in the American market as high quality products than if it offered them in blocks. Like the United Artists Corporation, World Wide Pictures, Incorporated, was convinced that the individual sale of pictures tended to emphasize the merit of high quality pictures and to assist the distributor in obtaining higher prices for its product.

Another deciding argument in favor of individual selling was that it was the type of selling which the exhibitors in large numbers

were demanding. Many exhibitors who had found that block booking did not suit them were active in demanding individual selling. The executives believed that the company should adopt that method which would be best suited to the requirements of the exhibitors, in order to develop goodwill for the company.

The principal arguments against individual selling always had been those advanced by the large producer-distributor companies which had large investments in producing equipment and were forced to make and sell a certain number of pictures each year to use that equipment efficiently. World Wide Pictures, Incorporated, would not be subject to such a requirement. It had no financial interest in any producing companies, and it was bound by no contracts requiring it to distribute a fixed number of pictures each year. In fact, there was a possibility that even the companies for which it was to distribute would have already earned the cost of the pictures and some profit from their European exhibition and would be seeking the last increment of profit in the United States. The only fixed burden to which the company would be subject would be the cost of maintaining the sales organization.

The company decided to sell all the pictures which it imported on an individual basis. It also decided to sell them only after they had been completed and prints had been received in the United States, so that exhibitors, if they so desired, could see each picture before making their purchases. Whether or not the exhibitors took advantage of the opportunity to see the pictures, they at least would have seen the trade comments which always followed the completion of a picture and its first screening before critics or interested parties. The company planned to release about 10 or 12 pictures at a time and thus give its salesmen a large enough number of pictures to justify their visits to exhibitors. While most exhibitors probably would not elect to buy all the pictures offered, it was hoped there would be a large number who would buy several pictures out of the group. In this manner the cost of selling each picture would be reduced.

No distributor of motion pictures had any fixed scale of prices. Prices always were arrived at after considerable bargaining between the distributor and the exhibitor. They varied for each picture and for each exhibitor and depended upon such factors as the size and location of the theater, the type of picture, the

popularity of the star playing the leading role, the time of exhibition with reference to the picture's release, the general reputation of that type of picture, and the relative bargaining ability of the two parties to the sale. Distributors of pictures made in the United States, however, had the benefit of past experience from which to determine approximately what they might expect to receive from the sale of pictures of a certain type. Since most of them sold their pictures in blocks, they could determine with considerable accuracy what price could be obtained for a block, if it contained pictures of about the same quality as previous blocks.

Inasmuch as World Wide Pictures, Incorporated, had no such precedents upon which to base selling prices for its pictures, it decided to give each picture a test exhibition at a theater in the vicinity of New York shortly after the picture had been received and before active selling began. The executives of World Wide Pictures, Incorporated, had had wide experience in the sale of pictures made in the United States and knew what prices should be obtained for them. They were not equipped, however, with knowledge of the prices that might be expected from imported pictures. From the test exhibition or series of exhibitions the executives expected to estimate the value of the pictures to exhibitors in comparison with other pictures. From this estimate the company would formulate approximate asking prices for its pictures as well as estimates of the prices that probably would be obtained actually.

The company adopted the slogan, "Exhibitors' Choice," as descriptive of its selling method. It advertised extensively in motion picture trade papers, always emphasizing the fact that it had adopted that type of selling which it believed would be most satisfactory to exhibitors.

COMMENTARY:[3] The reasons for not selling the pictures distributed by World Wide Pictures, Incorporated, in blocks are substantially valid. As with the United Artists Corporation,[4] the problems of the company were substantially different from those of the larger producer-distributors. It is not likely, for example, that any exhibitor would buy a block of foreign pictures without having had an opportunity to see

[3] See commentary on Federal Trade Commission *v.* Famous Players-Lasky Corporation, *et al.*, page 260.

[4] See United Artists Corporation, page 281.

the pictures first. It appears that many exhibitors had developed a definite prejudice against foreign pictures because they had lost money on many of these pictures. Moreover, American audiences had not always responded favorably to the type of foreign pictures which had been imported in the past. For both these reasons it is not to be expected that an exhibitor would be willing to buy a block of pictures from World Wide Pictures, Incorporated. The case does not indicate, furthermore, whether World Wide Pictures, Incorporated, was actually able to import a sufficient number of foreign pictures to make block booking possible.

It is of particular interest to note that the company planned to give each picture a test exhibition after it had been received and before active selling began. From such test exhibitions the executives expected to be able to estimate the value of such pictures to exhibitors. It is also to be noted that the pictures were to be sold largely on a percentage basis. Both of these policies would tend to make the company's offerings more attractive to exhibitors.

November, 1929 H. T. L.

Independent Films, Incorporated

DISTRIBUTOR—MOTION PICTURES

Loss of Market—*Effect of Producer-Controlled Theaters on State Right Exchange.* A corporation distributing in a limited territory, as a state right exchange, the motion pictures of independent producers was faced with the growing competition from producer-distributor control of theaters, and the consequent reduction in the number of independent producers who were able to meet successfully the new conditions. The corporation endeavored to maintain itself by selling the pictures of one producer only, but found that the increasing number of theaters being operated by large chains was seriously handicapping its sales possibilities. (1921–1929)

In 1921, two men who had had considerable experience in the distribution and exhibition of motion pictures in New England, organized in Boston the Independent Films, Incorporated, a local company to distribute motion pictures to exhibitors in New England. Between 1921 and 1927 the company distributed the pictures of a sufficient number of producing companies to make up a satisfactory line of motion pictures. In 1927 the company dropped all lines of pictures except those produced by the Columbia Pictures Corporation and began to distribute exclusively Columbia pictures. In 1929 the executives of the company were considering what should be done to meet the gradually changing conditions of competition in the industry brought about by the acquisition of large chains of theaters by some of the arge producer-distributor companies.

When the company was first established two types of distributing organizations were in prominence. One was the large national distributor with exchanges in all the important film distributing centers of the United States. A company of this type usually distributed the pictures of one large producer, often an allied company. At that time there were only a few companies which produced enough pictures and had sufficient financial strength to maintain the large organization necessary for this type of distribution.

The other type of distributor prevalent at that time was known as the "state right" exchange. The state right exchange was a local wholesaler which sold the pictures of one or more producing companies to the exhibitors in a limited territory. It usually obtained from a producing company the exclusive right to distribute each of the producer's pictures throughout that territory for a period of five years. The state right exchanges had concentrated in certain large cities which had become important centers of the motion picture business and the territories covered by them had become somewhat standardized, until there were about 20 fairly well defined distributing territories in the United States. The territory served from Boston, for instance, comprised all the New England states. In general, it was estimated that on the average picture this territory yielded to producers about 8% of the total revenue earned in the entire United States. In Boston, at the time Independent Films, Incorporated, was established, there were 10 or 12 state right exchanges.

The terms under which state right exchanges distributed pictures for producers varied widely. Some state right exchanges bought pictures outright and sold them for their own account. In general, however, the arrangements between producing companies and exchanges provided for division of the proceeds of the sale of the pictures on a specified percentage basis. The percentage division of the proceeds averaged 50% for the producer and 50% for the exchange. It varied, however, so that the percentage received by the exchange might be from 40% to 55%. In many cases a definite guaranty against the expected returns also was paid to the producer as an advance before the production of a picture. This payment assisted the producing company to finance the production of its pictures and also furnished it with a guaranty of the intention of the exchange to fulfill the contract.

Occasionally the guaranty was paid after the picture was made. In any event, the amount of the guaranty advanced plus the cost of prints was deducted by the exchange from the first proceeds of its sales of the picture.[1] If the sales exceeded this amount, the

[1] The rights of distribution granted a state right exchange did not include the provision by the producer of the necessary prints of the film. The exchange was required to buy these prints at a certain standard price per foot as a separate transaction. The producer usually permitted the exchange, however, to deduct the cost of prints from the revenue from sales before sharing with the producer.

exchange then retained such a sum as would bear the same proportion to the amount already advanced to the producer as did the percentage of receipts to be received by the exchange to the percentage to be received by the producer. After that sum had been reached all receipts were to be divided according to the percentage agreed upon. If, for example, an exchange agreed to distribute a picture for 50% of the gross receipts and to pay a guaranty of $5,000, it would deduct $5,000 from the first proceeds received to reimburse itself for the advance. If proceeds continued to come in, the exchange next would deduct the cost of prints. After that it would receive for itself the next $5,000, making its share at that point 50% and that of the producer 50%. After $10,000 and the cost of prints had been received, any further receipts would be divided half to the producer and half to the exchange.

In the period around 1921, state right exchanges carried on an active business. There were a number of independent producing companies which did not maintain their own distributing organizations. These companies generally arranged with various state right exchanges in different territories for the distribution of their pictures. At that time only the largest producers maintained their own distributing organizations.

Many state right exchanges were in the habit of contracting for one picture at a time. When a picture was delivered to them by a producer they sent their salesmen into the field to sell it. Later, when another picture was received, it would be added to the salesmen's line. Thus, although the salesmen might have more than one picture at a time, they would, in effect, be selling the pictures individually. Other state right exchanges contracted for pictures in larger groups and perhaps from fewer companies but sold them to exhibitors individually, or in small groups.

All state right exchanges selling on an individual basis had had difficulty in meeting the competition of the large nation-wide distributors, each of which usually sold in a group a program of pictures from the producing company with which it was allied. These programs of pictures were offered at the beginning of the selling season and were bought by the exhibitors in groups to make up their programs for the year. The state right exchanges, having only a few pictures to sell at a time, found that they were not able to sell these pictures readily and that exhibitors fre-

quently were willing to buy the pictures only as fill-ins at lower prices after having built up the main portion of their programs with other pictures.

When Independent Films, Incorporated, was established it planned to buy a sufficient number of pictures each year to be able to offer its customers a program of pictures, rather than single pictures from time to time during the year. By this means it hoped to be able to offer a wider variety of pictures. It also hoped that it thereby might be able to sell on more satisfactory terms, inasmuch as it would be able to present its pictures in groups which the exhibitors could incorporate in their programs. In the first year of its operation the company distributed only four pictures. They were four James Oliver Curwood pictures which the company sold successfully in a group. It continued to sell its pictures in groups and to increase each year the number of pictures included in the groups. In 1925, it sold 31 pictures, of which 18 were made by the Columbia Pictures Corporation and 13 were made by the Chadwick Pictures Corporation. In 1926, it sold 50 pictures, of which 24 were made by the Columbia Pictures Corporation, 20 by the Gotham Pictures Corporation, and 6 by George Walsh Productions.

The company, like all other state right exchanges, found that one of its difficulties was to provide itself with a sufficient number of satisfactory pictures. The independent companies which produced for state right distribution were small and many were not adequately financed. They frequently did not deliver pictures when promised and often their pictures were of poor quality. Frequently they went out of existence without even starting the production of the pictures contemplated. Besides the difficulties of insufficient financing, another reason for the weak position of most independent producers was that they in turn could not depend upon the distribution offered by state right exchanges. Such producers might obtain entirely satisfactory distribution from an exchange in one territory but find only poor distribution in another territory. Inasmuch as a company producing motion pictures made its production plans on the assumption that it would sell its pictures profitably in a large part of the United States, such limited distribution often resulted in limited income and ultimate disaster to the producer.

The difficulties of state right exchanges increased during the period from 1921 to 1927, and they found it increasingly difficult

to make satisfactory profits. The large producing companies by a process of combination and enlargement were becoming stronger, making a larger number of pictures each year and obtaining control of more and more theaters. By owning their own distributing companies and their own theaters they obtained more efficient distribution than was available to the independent producing companies. As their competitive position improved, that of the independent producers became worse. The number of independent producers decreased as a result. Two or three of them, however, were able to improve their pictures from year to year and to obtain more satisfactory distribution. They gradually built up a satisfactory volume of business for their increased line of pictures. The large companies which combined production, distribution, and exhibition required more pictures for their theaters than they themselves produced. They therefore bought some of the best of the independently produced pictures.

As this movement continued, Independent Films, Incorporated, found it increasingly difficult to obtain pictures of high merit. One of the producing companies whose pictures it distributed, however, was improving its pictures year by year, and increasing the number produced. That company was the Columbia Pictures Corporation.

Independent Films, Incorporated, had been selling the pictures made by the Columbia Pictures Corporation since 1923. The pictures always had been of satisfactory quality and always were delivered as promised. By 1927 the Columbia Pictures Corporation was making a sufficient number of pictures so that the distribution of them occupied efficiently the entire time of the salesforce of Independent Films, Incorporated. The producing company also was establishing its own exchanges in those territories in which distribution had not been satisfactory. In that year Independent Films, Incorporated, decided to drop the distribution of all other pictures and deal exclusively in those of the Columbia Pictures Corporation. The number of pictures produced by the Columbia Pictures Corporation from 1923 through 1928 was as follows:

1923	6
1924	8
1925	18
1926	24
1927	30
1928	36

Executives of Independent Films, Incorporated, favored this step for several reasons. They believed that it would be more satisfactory to carry on business with only one producer than with several. They were of the opinion that the consistent advance in quality of Columbia pictures and the efforts of that company to improve its distribution elsewhere, indicated that the company had a plan for the betterment of its position in the industry and that it probably would continue to do business for a number of years to come. The Columbia Pictures Corporation had asked Independent Films, Incorporated, to distribute only Columbia pictures, and if that company refused, there was the possibility that the Columbia Pictures Corporation might establish its own exchange. This action would deprive Independent Films, Incorporated, of its best and largest line of pictures. If Independent Films, Incorporated, distributed Columbia pictures exclusively, it would be able to concentrate its promotional efforts to advantage on the one line of product. The Columbia Pictures Corporation, moreover, was spending more money on advertising to exhibitors than were the smaller independent producing companies. It was believed that this advertising effort, combined with the improved distribution which the producing company was attempting to secure in other parts of the United States, would increase the sales of its pictures in the New England states.

In 1927, Independent Films, Incorporated, made an agreement with the Columbia Pictures Corporation to distribute its pictures exclusively in the New England states over a period of years on a percentage and guaranty plan similar to the one that had been in effect before. The new plan provided, however, that the amount of advance, the cost of prints, and a certain percentage to cover overhead be deducted by the exchange from the gross income before the two parties to the contract would share according to the agreed percentage. For example, the agreement might provide that the exchange advance $1,000 against a picture, that the exchange be allowed to recover 35% of the amount of the advance to cover overhead expenses, and that when the advance, the cost of prints, and the percentage to cover overhead had been deducted, the producer and the exchange should share equally any remaining income. In such an instance the accounting by the exchange for the first $1,550 would read:

Advance	$1,000
Cost of prints (assumed)	200
Exchange overhead at 35%	350
	$1,550

Any further income would be divided one-half to the producer and one-half to the exchange.

Independent Films, Incorporated, found this new arrangement satisfactory. The Columbia Pictures Corporation delivered pictures of satisfactory quality according to the agreed schedule of deliveries. It also arranged its annual program of pictures to include one or two pictures of extra quality which were completed and released near the beginning of the selling season, thus attracting the favorable responses of exhibitors, and enabling the company to make more sales. The quality of the pictures improved from year to year and Independent Films, Incorporated, was able to increase its gross sales about 15% each year.

From 1927 to 1929, marked changes took place in the industry which influenced the immediate success and the probable future success of all state right distributors. The number of independent producers was decreasing, and the large producer-distributors were increasing rapidly in size and power. As a result, the state right exchanges were finding it increasingly difficult to obtain satisfactory pictures for distribution; many of them discontinued their business. To meet this situation the Columbia Pictures Corporation had adopted the policy of gradually building up its own exchange system. Wherever it could not find satisfactory distribution through a local exchange it established its own. By 1929, it had in operation 24 exchanges.

The large producers which already had acquired their own distributing organizations began to acquire control of large chains of theaters. As a result, they had a substantial market guaranteed to them from their own theaters. In 1928, most of the large chains of theaters were owned by the large producer-distributor companies. These companies further arranged between themselves to trade their pictures between their own theaters; that is, a producer-distributor would buy the pictures of another producer-distributor for its theaters if the other would reciprocate. In this way the exhibition time of most of the large chains of theaters was occupied by the pictures of the companies controlling them without leaving any opportunity for the sale of the pictures of

such producers as the Columbia Pictures Corporation. The Columbia Pictures Corporation had not acquired any theaters. The increasing number of theaters being operated by the large chains was seriously handicapping the sales possibilities of Independent Films, Incorporated.

COMMENTARY: The significance of this case is to be found in the illustration which it provides of the necessity of recent changes in methods of distributing motion pictures. These changes have been made necessary because of changes in the character of the market and of competition. In the case of Ainsworth Pictures, Incorporated,[2] attention was called to the place once occupied by state right exchanges. The acquisition of theaters by producer-distributors, the development of producer-controlled exchanges, and the consolidation of production units, with the attendant limitations of the sources from which a state right exchange could secure pictures, all have tended to reduce such state right distributors to a place of comparative unimportance. A great many state right exchanges have ceased to exist. Many others have been purchased by producers who have utilized them as a nucleus around which to build their own distributive organization. Such, in effect, has been the subsequent history of Independent Films, Incorporated.

It may be noted in passing that the state right exchange constitutes the nearest approach to a parallel in the motion picture industry of the wholesaler as he appears in other fields, such as drugs and groceries. In both cases supplies are gathered from many different sources under terms which are practically equivalent to purchase, and then resold upon the wholesaler's own terms. Such wholesalers, in both cases, are used as channels of distribution, generally speaking, by producers unable to finance direct distribution and for the purpose of reaching retail outlets whose purchases are so small as to make any form of direct sale unduly expensive.

November, 1929 H. T. L.

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[2] See Ainsworth Pictures, Incorporated, page 26.

Elder Film Corporation[1]

PRODUCER AND DISTRIBUTOR—MOTION PICTURES

Terms of Sale—*Five-Year Distributor-Exhibitor Franchise Agreement as a Means for Mutual Economies.* A corporation producing and distributing motion pictures wished to adopt a form of exhibitor contract which would bring about economies of distribution, secure an adequate market for its product, and protect its newly established sales policy. Under this policy, the company sold its pictures in groups of three, each picture being offered for sale as a unit, instead of selling them in large blocks as it heretofore had done. To attain the objectives sought, the company decided to offer, to selected exhibitors, a five-year franchise agreement, providing for either percentage or flat rental prices and giving the company prior dating preference for its pictures at all times.

(1929)

In 1929 the Elder Film Corporation, one of the largest completely integrated motion picture companies, contemplated offering a five-year franchise agreement to exhibitors. The object of this innovation was to reduce the cost of distribution, to secure and insure an adequate market for the company's product, to protect the company's new sales policy, and to insure deserving independent exhibitors against a shortage in the supply of good pictures. Disputes arising from the contract were to be settled by an arbitration council of three, consisting of one representative of each of the contesting parties and a third appointed by their mutual consent, rather than in the manner provided by the Standard Exhibition Contract.

The company's new sales policy, introduced during August, 1929, provided for the release of Elder pictures in groups of three, each picture being offered for sale as a unit[2] after its exhibition value had been tested either in New York City or in Los Angeles, California. Elder Film Corporation executives pointed out the merits of the plan as follows: It automatically abolished block booking and thereby did not risk the disapproval of the Federal Trade Commission. It prevented exhibitors from overbuying.

[1] Fictitious name.
[2] See Bagdad Pictures Corporation, page 263.

Because it ended product classification, the company was assured of a maximum return from each picture. From the standpoint of production it eliminated all forms of substitution and similar problems which in the past had resulted from blind and block selling.

The sales organization and distributive system of the Elder Film Corporation, comprising 35 exchanges, were typical of those of the largest motion picture companies. All sales functions were controlled from the home office in New York City by the general manager in charge of distribution. Division managers were maintained in Boston, Philadelphia, and Los Angeles. There were four home office sales managers, assigned to the following territories: Metropolitan (New York), Southern and Western, Central, and Canadian. The latter was responsible for the six Canadian exchanges.

The operating expense of a typical exchange of the Elder Film Corporation, including salaries of exchange managers and salesmen but not including its portion of home office overhead, was approximately 8% of its gross sales. The average maintenance expense for each salesman was about 11% or 12% of his gross sales. In 1929, it was estimated that salesmen whose operating expenses exceeded 12% of their gross sales were unprofitable to the company. All salesmen were paid flat salaries, plus 5 cents per car mile, $5 a day living expense, and necessary additional incidental expense. The company had never used bonuses, commissions, or similar methods of compensation and sales stimulation.

In addition to their supervisory duties, home office sales managers made sales to large national chain theater systems whose film buyers were located in New York City. As a general rule, when possible, division managers also participated in the sales made to these accounts. Exchange, division, and home office sales manager sales were not allocated to the salesmen in whose territories they were made.

All sales other than those made by home office sales managers were divided into three general classes according to the type of buyer. Large chain organizations whose purchases were made outside New York, and which as a rule were free from producer or distributor affiliations, were sold to by the division managers in whose territories they were located. Large independent exhibi-

tors operating de luxe and class A theaters were sold to by the various exchange managers. The remaining buyers, whose sales comprised approximately 15% of the total sales volume, were sold to by the regular exchange salesmen.

The Elder Film Corporation usually began its selling season in early summer. Sales effort was greatest during the first three months, especially in selling to the first and second types of buyers. There were several reasons, however, why it was necessary to maintain sales pressure throughout the theatrical year. In the first place, in addition to the large chains and first-run independent theaters, there were five and sometimes six subsequent-run theaters in certain localities. Because the company desired to adhere to the established practice of selling all first-run theaters first, and subsequent-run theaters in subsequent order, its salesmen were compelled to cover and recover their territories as rapidly as was possible. This process consumed almost six months' sales effort. Furthermore, pictures not scheduled on the regular production program were often made available for release during the theatrical year, and had to be sold. The ever-present possibility of spot bookings was an additional reason for the necessity of twelve months' sales effort. Then too, toward the latter half of the theatrical year many already booked dates were reopened because of the following reasons: substitutions were made by the producers; exhibitors were generally dissatisfied with a complete contract block of pictures; dates were held open by exhibitors for unscheduled box office successes, since nearly all producers made at least one or two pictures not contemplated at the time the production program was planned; and exhibitors sometimes shelved pictures already booked and paid for, either because they were unsatisfactory, or because the box office possibilities of some current offering made such a procedure profitable.

In the past, although unit picture sales were not uncommon to the Elder Film Corporation, it had sold its product in blocks,[3] each of which contained from 2 to 35 pictures. All sales had been made in strict compliance with the Standard Exhibition Contract adopted by the Motion Picture Producers and Distributors of America and used by all members of that organization,

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[3] See Federal Trade Commission *v.* Famous Players-Lasky Corporation, page 226.

which comprised a large majority of the producers and distributors in the United States.

From 1927 to 1929, radical changes had taken place in the motion picture industry. The Elder Film Corporation and the three other dominating companies, through a process of integration, had acquired control of a majority of worth-while theaters throughout the United States. The president of the company believed that the next two years would witness a much more complete integration, and that the future status of the Elder Film Corporation was partially dependent upon the extent to which its present distribution could be augmented either by outright purchases of theaters or by contractual agreements with exhibitors. The president recognized that the possible introduction of television and of the wide screen might render the present type of theaters obsolete; therefore he was inclined to favor expansion of the company's theater control without actual ownership of the theaters.

Integration of production, distribution, and exhibition naturally had greatly increased centralized buying. Whereas formerly, territory salesmen were responsible for over 85% of the sales of the Elder Film Corporation, in 1928 they produced less than 15% of the total volume of sales. This situation created two problems. The first concerned the cost of selling to the small, widely separated, independent buyers; and the second, the effect that centralized buying and the resultant trading among the larger companies had had on the supply of films available for independent theater exhibition.

In its search for a plan to reduce the costs of selling to the small independent exhibitors, the Elder Film Corporation had considered mail order sales, the establishment of market days on which the small independent exhibitors could visit the various exchanges of the Elder Film Corporation to preview the company's product and purchase accordingly, and reduction in size of the salesforce. The Metro-Goldwyn-Mayer Pictures Corporation and Pathe Exchange, Incorporated, were reported as having materially reduced their sales staffs all over the country. With the narrowing down of the field that it heretofore had been necessary to cover to sell films, these companies apparently saw no reason for continuing their large staffs. In midsummer, 1929, the Fox Film Corporation discontinued district managerships throughout the country.

Because of the concentration of theater purchasing power these posts were believed to be unnecessary.

The president of the Elder Film Corporation believed that a reduction in the size of the salesforce might be accomplished to a limited extent, but because of the size of the sales territories, and the distance between the small independent theaters, he questioned its advisability. He believed, furthermore, that the new policy of selling pictures as units might involve numerous repeat sales calls and therefore would require the services of additional, rather than fewer, salesmen. In his opinion, competition prevented the company from adopting either of the first two plans.

As a solution of these problems, and as a protection to the new sales policy, the general manager in charge of distribution proposed the adoption of a five-year franchise agreement. The following are excerpts taken from the proposed contract.

Franchise Agreement

1. The Distributor hereby grants and the Exhibitor accepts a license under copyright subject to the terms and conditions hereinafter stated, to exhibit, beginning with the first photoplay released by the Distributor during the motion picture season of 1929–1930, and continuing for the four succeeding motion picture seasons, and consisting of all motion pictures released by the Distributor within the limits hereinafter specified, during the said five motion picture seasons, in all motion picture theaters, or combination motion picture and vaudeville theaters listed in Schedule "A" hereof. The Exhibitor agrees to pay for such license as to each of said photoplays the sums hereinafter specified. Such license shall be specifically for the exhibition of such photoplays at such theaters, on exhibition dates determined as hereinafter provided and for no other purpose. The Exhibitor agrees to pay for such license as to each of said photoplays the sums hereinafter specified at least three days in advance of the first date of exhibition of each of such photoplays and further agrees to exhibit and pay for all regular motion pictures so released by them not exceeding a maximum of fifty-two (52) regular motion pictures in any one motion picture season, together with all the roadshows and special motion pictures released by the Distributor. For the purpose of this franchise, the motion picture productions released by the Distributor shall be divided into three general classifications, to wit:

Roadshow Motion Picture Productions,
Special Motion Picture Productions,
Regular Motion Picture Productions,

and the said three classifications are defined for the purpose of this franchise as follows:

(a) Roadshow Motion Picture Productions as referred to herein are motion pictures released by the Distributor which shall be exhibited in the main theatrical district of New York or elsewhere on a pre-release basis for one or more weeks, that is to say, on a basis whereby only two shows a day are given at advanced admission prices.

(b) Special Motion Picture Productions are any motion pictures which shall be nationally designated and handled by the Distributor as special motion pictures.

(c) All feature motion pictures released by the Distributor not included under classifications (a) and (b) above, shall be deemed regular motion picture productions.

The names of the theaters in which such motion pictures shall be exhibited and their location and the prices which the Exhibitor agrees to pay for each of the three classifications of motion pictures at each of the said theaters for the full term of this franchise are set forth in Schedule "A" hereto annexed and hereby made a part hereof as though herein set forth at length.

2. The rights herein granted to exhibit the motion pictures herein specified shall also include the right to receive and exhibit so-called synchronized prints thereof, to be used only in connection with records of sound leased from The Elder Film Corporation on or before the date hereof; but if such agreement shall not have been made by the Exhibitor with The Elder Film Corporation for the lease of such records of sound to be used in connection with such motion pictures on or before the date of this agreement, then the rights herein granted shall not include the right to receive and exhibit the so-called synchronized motion picture prints of such motion pictures, but the rights herein granted shall be for silent exhibition only.

3. The rights of the Exhibitor to exhibit all of such motion pictures and any individual motion picture within the said three classifications hereinbefore specified shall be subsequent to roadshow exhibitions in the city or zone in which each of the said theaters specified in Schedule "A" hereof are located, and a roadshow exhibition in any of the said cities or zones shall be deemed to mean "a pre-release exhibition for one or more weeks, at advanced admission prices on a two-a-day basis." Such roadshowing shall be prior to any showing at the theaters specified in Schedule "A," and such theaters shall not be entitled to exhibit such motion pictures until after the completion of the said roadshowing together with the period of protection thereon, and if the rights herein granted under this franchise are for other than a first run, such showing shall be subsequent to all prior runs.

7. The Exhibitor shall exhibit each of the photoplays provided for hereunder in each of such theaters as are listed in Schedule "A" hereof on days to be determined as follows: If the theater is entitled to the first showing of the picture in the zone, district, or territory in which it is situated, the Distributor shall notify the Exhibitor two weeks

in advance of the general release date of each motion picture provided for hereunder for such zone, territory or district and the Exhibitor shall within a period of seven (7) days thereafter designate the first exhibition date of such motion picture for each theater which first exhibition date shall not be later than seven (7) days after the general release date so designated in such notice. If the theater is entitled to exhibit pictures subsequent to prior showings or runs in such zone, territory or district, the Exhibitor shall be required to exhibit the pictures provided for hereunder in such theaters within two (2) weeks after the expiration date of the period of protection given to all prior runs. Failure of the Exhibitor to play the pictures at the times and in the manner in this paragraph provided shall constitute a vital breach of this agreement and the Distributor shall be entitled to recover from the Exhibitor forthwith damages for breach of this entire agreement or damages caused by failure to show such motion pictures at the time and in the manner in this paragraph specified whichever remedy the Distributor may choose.

(a) Whenever during the term of this agreement the Exhibitor does not have the theater listed in Schedule "A" hereof available for the run of any Special or Roadshow picture provided for hereunder within the time limits provided for in Paragraph 7 hereof, then and in such event, the Distributor may, if it so elects, exhibit such picture or pictures in some other theater or theaters in such city or zone or license some other exhibitor to exhibit such picture or pictures in competing theaters of such city or zone and in such event all rights of the Exhibitor in respect to such picture or pictures shall forthwith terminate without liability from the Distributor to the Exhibitor therefor. Nothing in this paragraph contained, however, shall be deemed to relieve the Exhibitor from the obligation to exhibit and pay for all Roadshow and Special motion pictures for such theaters as are listed in Schedule "A" hereof, upon all the terms and conditions set forth in this agreement and he shall only be relieved from such obligation when the Distributor shall elect to play such pictures in other theaters pursuant to the provisions of this paragraph.

(b) In the event that the number of pictures distributed by the Distributor which the Exhibitor agrees to exhibit pursuant to Paragraph 1 hereof shall be less than the total number of pictures released by the Distributor in any one year, then and in that event, the Distributor shall designate which pictures shall be played at the theaters specified in Schedule "A" hereof and in that respect the Distributor will endeavor to make a pro rata division of the pictures to the end that the pictures to be played by the Exhibitor will be a fair proportion of all of the pictures.

(c) The Exhibitor agrees to play all motion pictures provided for hereunder at the theaters specified in Schedule "A" hereof in the order of the release of the pictures by the Distributor.

(d) The Exhibitor agrees at all times to reserve sufficient playing time in the theaters specified in Schedule "A" hereof so that he may

play all pictures provided for hereunder at the time and for the periods herein agreed upon.

(e) The Exhibitor covenants and agrees that he will not advertise any motion pictures provided for hereunder in any manner during any prior run in the city, zone, territory or district in which such theaters are located.

8. Wherever and whenever this agreement and the schedules hereof provide for the payment by the Exhibitor to the Distributor of a percentage of the receipts of the theater or any of the theaters listed in Schedule "A" hereof, the Exhibitor shall furnish to the Distributor a daily statement of the gross box office receipts of the theater divided into the different admission prices and afternoon and evening performances, together with a weekly statement of the gross box office receipts of the theater, all of which statements shall be certified as correct by the treasurer of the Exhibitor and all percentages due to the Distributor shall be paid to them not later than Saturday of each week. The Distributor shall have the right to have a representative at the said theaters during any or all percentage engagements who shall have access to the box office and all books and records of the theaters, and at all times to audit the books of the Exhibitor. No "passes" or free tickets shall be issued by the Exhibitor during any percentage engagement without the prior written approval thereof by the Distributor.

9. In the event that the Exhibitor shall dispose of their interests or control in the said theaters, or any of them, now owned, operated, controlled or booked by them, or either of them, or hereafter erected, operated, owned or controlled by them or either of them, or shall consolidate or merge with some other firm or corporation, or shall cease to operate such theaters or any of them, then and in that event the Exhibitor hereby guarantees that all of the terms and conditions of this agreement shall be fully performed and executed by such purchasing, acquiring, operating, consolidating or merging firm or corporation. The Distributor, however, has the right and option to cancel this franchise and all rights and privileges herein granted to the Exhibitor without any further liability on his part in the event that the Exhibitor shall dispose of their interest in or control of any of the theaters listed in the schedules hereof.

11. The Exhibitor agrees to exhibit said photoplays only at the theaters herein specified. The Exhibitor will not allow any positive print to leave the possession of the Exhibitor during the period specified for the exhibition thereof by the Exhibitor, and will not exhibit or permit the exhibition of any such positive print at any other time or place than those herein specified or determined as herein provided. If the Exhibitor shall erect or acquire the operation or control of one or more additional theaters in the city or zone in which any of the theaters listed in Schedule "A" hereof are located, which theaters have the same run (that is to say, first, second, or third run as the case may be) as the theaters listed in Schedule "A" hereof, then the Exhibitor shall be

obligated to exhibit photoplays released by the Distributor and licensed for exhibition hereunder in such theater or zone including such newly erected or acquired additional theaters as the Exhibitor had been giving to such theaters before the erection or acquisition of such additional theaters. That is to say, the Exhibitor shall be obligated to play in such newly acquired or erected theater the photoplays licensed hereunder upon the same terms as he has agreed to play such pictures in the theaters listed in Schedule "A" hereof.

13. In the event of default by the Exhibitor in exhibiting or paying for any photoplays in accordance with the provisions hereof or if the Exhibitor shall exhibit or permit the exhibition of any of the said photoplays at any time or place other than those specified, or otherwise violate this agreement the Distributor may at its option, terminate this agreement or suspend the delivery of additional photoplays hereunder until such defaults shall cease and be remedied, but the election of either of said remedies shall be without prejudice to any other of the rights or remedies of the Distributor in the premises by reason of such breach. In the event of the intentional violation by the Distributor of any protection or "run" clause contained in this contract, or in the event of the intentional default of the Distributor in delivering any photoplay to the Exhibitor hereunder and while such last mentioned default continues, the Exhibitor may at his option terminate this contract by giving immediate notice in writing to the Distributor, but the election of such remedy shall be without prejudice to any other rights or remedies of the Exhibitor in the premises by reason of such breach. No waiver by either party (or any breach or default by the other party) shall be construed as a waiver of any subsequent breach or default by such other party.

19. If Exhibitor fails to play any picture or pictures on the exhibition dates fixed hereunder, or fails to pay any sums of money due hereunder, or becomes insolvent, or is adjudicated a bankrupt, or executes an assignment for the benefit of creditors, or if a receiver is appointed for Exhibitor's property, in any of such events the Distributor may at its option by written notice addressed to Exhibitor at any of the theaters set forth in Schedule "A," cancel and terminate this agreement absolutely, but without prejudice to any rights of compensation, damages or causes of action which Distributor may have with respect to such breaches on the part of Exhibitor.

20. This agreement constitutes the entire agreement between the parties with respect to the Photoplays herein described, and all the representations, understandings, and agreements with respect thereto between the parties are merged in this agreement. All existing written contracts between parties hereto for the exhibition of Photoplays other than herein described are to be fully performed and carried out by both parties, any other provisions in this agreement notwithstanding. Neither this contract nor any modification thereof shall be valid unless and until executed by Distributor in writing at its New York Office, through its duly authorized officers.

The general manager believed that such a contract would prove popular with independent exhibitors who were not sure of securing a constant film supply in the future; that it would insure the Elder Film Corporation control of adequate exhibition without the necessity of purchasing theaters of doubtful future value; that it would provide a means through which the new sales plan could be effected without the services of additional salesmen; and, in addition, that it would not only reduce the existing cost of distribution, eliminate constant bargaining, and lessen the required number of salesmen, but would enable the remaining sales representatives to concentrate their efforts on new accounts instead of on resales to the same exhibitors each year. The plan as presented provided for percentage as well as flat rental sales. In the opinion of the general manager, this feature provided the flexibility necessary to insure the company of its share of profits, which naturally should increase during the life of the agreement.

The western sales manager recognized the merits of the plan, but did not favor its adoption. He considered the plan first from the standpoint of the exhibitors. In his opinion, it was not fair to those exhibitors who booked only one feature picture a week, to shut off from them the products of other companies which might at times excel in quality the productions of the Elder Film Corporation. Similarly, he deemed the plan unfair to those exhibitors showing more than one feature picture each week. Since the booking arrangement set forth in the proposed contract gave the Elder Film Corporation prior dating preference for its pictures at all times, rival producers would be likely to recognize that an exhibitor using the Elder Film Corporation's franchise might occasionally be compelled to break other contracts. Hence those producers would be apt to seek the patronage of exhibitors other than those operating under an Elder Film Corporation franchise.

From the standpoint of the company, the western sales manager believed that once an exhibitor had signed such an agreement he would not exploit his pictures so diligently as when his film supply was insecure. He thought it inadvisable, furthermore, to discontinue use of the Standard Exhibition Contract[4] and thereby create a disturbance within the organization of the Motion Picture Producers and Distributors of America. He was reminded that in 1928 and 1929, independent exhibitors opposed the Standard

[4] See Arbitration in the Motion Picture Industry, page 642.

Exhibition Contract in general, and in particular the compulsory arbitration clause contained therein; and that some of the more prominent exhibitor associations, such as the Northwest Exhibitors Association, already had withdrawn from settlement by arbitration because of an expressed belief that the Motion Picture Producers and Distributors of America and the 32 film boards which conducted all arbitration hearings were unfair. In answer, the western sales manager referred to the disturbed state of distribution existing in the multicontract period prior to the advent of the Standard Exhibition Contract, and to the benefits derived from cooperation with the Motion Picture Producers and Distributors of America. He stated further that any company plan of arbitration such as was proposed as a part of the franchise agreement would not be successful.

The western sales manager was asked to recommend a better plan. He suggested that the company might profit from an investigation of the Universal Film Corporation's recent sales innovation. By this plan, the Universal Film Corporation provided contracting exhibitors with complete program service for from one to any number of years requested by the exhibitor. Programs varied in type, although as a rule each one consisted of a feature picture, a short subject, and a newsreel. The service was sold on a flat weekly rental basis.

The president of the Elder Film Corporation commented on competitors' previous experiences with franchise agreements. He mentioned the apparent success that First National Pictures, Incorporated, had achieved with a somewhat similar plan which required yearly agreements as to rentals and play dates. Furthermore, since Elder pictures were very popular in 1929, he realized that the time was opportune to secure long-term contracts with exhibitors. On the other hand, he cited the unfavorable opinion of long-term contracts held by another large company, which had made use of five-year franchises only when they were requested by exhibitors. That company did not favor the plan because it had no assurance that selected theaters would continue for five years as the outstanding exhibitors in their respective localities.

Despite objections, the proposed plan was adopted. It was agreed that separate franchises should be provided for short subjects, and that their sale should be divorced entirely from the feature picture agreements.

Until the company's regular salesmen could be educated in the use of franchise agreements, only division and exchange managers were to be intrusted with such sales. The manager in charge of distribution opposed the adoption of an agressive campaign. He favored a cautious procedure in which the new agreements would supplement rather than replace the existing contracts. In his opinion, careful selection and a suggestive rather than a forceful attitude on the part of the Elder Film Corporation representatives, were essential to the success of the new policy. For example, once a desirable exhibitor had been selected, he should be told about the franchise agreement and its numerous advantages. If the exhibitor was interested, the company representative should explain that an approval by the New York office was necessary and that he would do all in his power to obtain an official sanction. A week or so later, the company representative should reapproach the exhibitor with the authority to proceed with negotiations.

Because of the details involved, it was to be expected that the negotiation process would require many conferences and much time. Since the future profits to be derived from each agreement were dependent to a great extent upon the original contract, it was essential that the company's representative understand thoroughly the general status of each prospective exhibitor.

Although a few flat rental agreements were to be expected, the company planned to negotiate the bulk of franchise agreements on one of two percentage price policies. The first involved a straight percentage split of all box office receipts. Percentages varied with the individual theaters, although it was estimated that de luxe and some class A theaters should pay from 20% to 25% of total receipts, and all others at least 50% thereof. Under the second method the Elder Film Corporation would receive a guaranty and split. The guaranty should equal 40% of total receipts based on past earnings. All receipts over two and one-half times the amount of the guaranty would be split equally between the company and the exhibitor. Estimates were based on past experience and on the expected increase in earning power resulting from the introduction of sound pictures.

An example of an Elder franchise contract follows:

STRAND THEATER

Names and General Location of Theaters

SEDALIA, MISSOURI

Road Show Productions.	To be exhibited at STRAND	Theater, only
		Minimum Admission Prices
Rental Terms	To be shown a minimum of FOUR (4) days. Distributor to receive ONE HUNDRED AND TWENTY-FIVE DOLLARS ($125.00) guarantee as against FIFTY PERCENT (50%) of the gross receipts.	15–20 Matinees
Additional Terms		25–35 Evenings

Special Productions.	To be exhibited at STRAND	Theater, only
		Minimum Admission Prices
Rental Terms	To be shown a minimum of THREE (3) days, Distributor to receive SEVENTY-FIVE DOLLARS ($75.00) guarantee, as against THIRTY-FIVE PERCENT (35%) of the gross receipts.	10–15 Matinees
Additional Terms		15–25 Evenings

Regular Productions.	To be exhibited at STRAND	Theater, only
		Minimum Admission Prices
Rental Terms	To be shown ONE (1) or TWO (2) days. Distributor to receive TWENTY DOLLARS ($20.00) guarantee, as against TWENTY-FIVE PERCENT (25%) of the gross receipts.	10–15 Matinees
Additional Terms		15–25 Evenings

Other Additional Terms If Any

The Exhibitor may, at his option, repeat any production on the following basis:

ROAD SHOWS—Distributor to receive SEVENTY-FIVE DOLLARS ($75.00) guarantee, as against THIRTY PERCENT (30%) of the gross receipts.

SPECIAL PRODUCTIONS—Distributor to receive FIFTY DOLLARS ($50.00) guarantee, as against TWENTY-FIVE PERCENT (25%) of gross receipts.

REGULAR PRODUCTIONS—On the same basis as first run.

Names and General Location of Theaters	Run in Location Set Forth in Column 1	Protection
STRAND THEATER MAIN STREET SEDALIA, MO.	First Run Sedalia	30 days protection from last play day in Sedalia, and with no protection over Bolton

(List Each Theater Separately)

COMMENTARY: It will be noted that this company, prior to the introduction of the franchise agreement, had set up a new sales policy which called for the release of pictures in groups of three, the purpose of the plan being to minimize the problems arising from substitution and to avoid the difficulties, legal and otherwise, inherent in block booking. It is probable that these objectives were more important than any thought that reducing the number of pictures in a group would tend to insure a larger return per picture, since prices would be determined for considerable periods of time in advance for all pictures. It will be noted also that, since a large part of Elder film sales were made to buyers located in New York, the total cost of distribution would not be increased under the new sales plan.

The particular issue in the case involves the desirability of the franchise agreement. Some question may be raised as to the legality of the agreement. Thus, it might be held that a contract was illegal which practically compelled an exhibitor from time to time to break other and presumably equally valid contracts. The use of this contract in lieu of the Standard Exhibition Contract, moreover, caused some

disturbance within the organization of the Motion Picture Producers and Distributors of America. With these two particular issues, however, we are not primarily concerned.

A much more important consideration is that of the desirability of the franchise from the point of view of the exhibitor. One outstanding argument may be advanced in favor of his accepting it, namely, that he was assured a group of from 40 to 60 pictures at a price definitely known in advance and from a well established producer. This factor was particularly important at a time when scattered independent exhibitors were apparently faced with a real problem of obtaining good program pictures in adequate quantity to meet their needs. It may be noted further that the agreement provided for a method of arbitration of disputes. It is difficult to determine the value of the particular policy of arbitration here proposed, since, as in all such arrangements, the real test was dependent upon the spirit in which the contract provisions were carried out. There is no reason to believe that the producer-distributor in this case would not be perfectly fair.

On the other hand, there were some distinct disadvantages to the franchise. For one thing, the exhibitor agreed to take all Elder pictures, including roadshows and specials, quite irrespective of how good or how bad such pictures might be. Considering the variability in quality, both within a single year and from year to year, the exhibitor might believe that, regardless of how good the Elder product was at the time the contract was signed, he would eventually be forced to take a large number of pictures which were either of distinctly poor quality or were ill adapted to his local market. This danger would be somewhat increased if the producer believed that he was assured a definite and irreducible volume of sales and that, therefore, he did not need to worry particularly about the salability of his product. Since, however, the independent market was a smaller market for the Elder Film Corporation than that provided by its own theaters and by those of other distributors, it is not probable that this latter danger was serious. Moreover, a producer using a percentage pricing policy would be likely to make his product of as high a quality as possible. The uncertainties of the future, however, might prove embarrassing to an exhibitor in other ways. If the Elder Film Corporation were to produce exclusively sound pictures and the exhibitor were not equipped to handle such pictures, he might find himself in a very awkward position. Likewise, if the producer decided to make pictures exclusively for the enlarged screen, then the exhibitor who for any reason whatever found it impossible to use such a screen, would find himself in rather serious difficulties.

The producer, moreover, had access to all the books of the exhibitor. Exhibitors in the past had persistently fought against the exercise of

this privilege by distributors, for reasons that have been made clear in other commentaries.[5]

For these and other reasons, it is possible that a great many exhibitors might hesitate to enter into the particular franchise agreement here proposed, and particularly to abide by it for as long a period as five years. That the objectives which the Elder Film Corporation sought to attain were desirable, and that they might, under certain circumstances, prove mutually profitable, is certain. That this particular franchise in all its aspects would be mutually satisfactory is not so clear.

November, 1929 H. T. L.

[5] See commentary on Sidley Pictures Corporation, page 333.

Puritan Films, Incorporated[1]

DISTRIBUTOR—MOTION PICTURES

Sales Organization—*Mail Solicitation in Preference to Personal Selling.* A corporation distributing motion pictures considered selling films by mail in order to effect economies in sales expenses. Because most large theaters were distributor-controlled and this corporation did not control any theaters, it was limited to the small and widely separated theaters as prospective purchasers. It was believed that a trial of the mail distribution plan could do little harm and that it would not be difficult to recruit a new salesforce if it should fail.

(1929)

In July, 1929, Puritan Films, Incorporated, considered an attempt to sell motion pictures by mail order. The co-owners of the company, Mr. N. E. Blazier and Mr. R. C. English, believed that this method might effect sizable distribution economies, and thereby enable them to cope with the situation brought about by the rapid development of distributor-owned and -controlled theater chains.

Puritan Films, Incorporated, with exchanges in New Haven, Connecticut, and Boston, Massachusetts, was the oldest and largest state right[2] distributor of motion pictures operating in New England. Since its inception in 1921 the company had achieved the goodwill of both independent and affiliated theater managers. Profits from operations had been satisfactory, and in 1929 the company was in excellent financial condition.

It had been the policy of Puritan Films, Incorporated, to distribute a complete line of films, including first-class features, program pictures, and various short subjects. From 1923 to 1927, among other films, the company sold both Gotham and Columbia pictures. During that time neither of the companies producing these pictures made a sufficient number of films to supply the needs of Puritan Films, Incorporated. Their combined annual output approximated 25 feature pictures. In 1927, the

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[1] Fictitious name.

[2] See Independent Films, Incorporated, page 295.

Columbia Pictures Corporation, then producing about 30 features each year, proposed that Puritan Films, Incorporated, discontinue all other brands and distribute Columbia pictures only. At that time reliable independent producers were comparatively few in number. Therefore, rather than lose the best and most complete line of available pictures, the offer was accepted.

During 1927 and 1928, many changes took place in the motion picture industry. The small, entirely independent producers had practically disappeared from the field, as had a majority of the state right exchanges. Certain of the remaining independent producers, including the Columbia Pictures Corporation, had organized or were organizing their own exchange systems. The largest companies, such as the Fox Film Corporation, the Paramount Famous Lasky Corporation, and the Radio-Keith-Orpheum Corporation, had entered the exhibition field, acquiring control of a large majority of the profitable theaters throughout the United States, including practically all the theaters located in or near the key centers. Films exhibited by these chains were usually purchased through central buyers located in New York City. As a result of this development Puritan Films, Incorporated, faced the problem of increasing the volume of its sales to the remaining independent exhibitors, and at the same time reducing the cost of distribution.

The sales organization of Puritan Films, Incorporated, was typical of the larger motion picture exchanges. The maintenance cost per individual salesman, not including office and general overhead expense, ranged between $100 and $150 each week. In previous years this amount had not been considered exorbitant. In 1929, however, because small and widely separated theaters constituted a large majority of the prospective purchasers for the company's product, such a figure was excessive in proportion to sales. The partners were convinced that under the existing methods sales costs could not be reduced appreciably; and that, furthermore, it would be difficult to equal the sales volumes maintained previously.

For some years past, Puritan Films, Incorporated, had retained a part-time film broker to sell to the company's New Hampshire accounts. He sold pictures principally through local acquaintances, on the basis of his own and the company's good reputation. He travelled but little, yet because of word-of-mouth advertising

his clientele had increased appreciably. The company recognized in this method of sale a possible solution to its problem. However, because it was practically impossible to secure the services of a sufficient number of capable brokers to cover the entire New England territory, the idea was discarded. As an alternative the mail order method of selling was considered.

If the company should adopt this plan, the change from the existing organization would be gradual. In the transitional period a mail order salesman would supplement the regular salesforce, confining his efforts to introductory advertising and to sales to the smallest, widely scattered exhibitors. Gradually, however, all but the ablest members of the salesforce would be eliminated. Those retained permanently would call on the larger accounts. The broker selling for the company in New Hampshire would continue to sell there under the new arrangement.

In operation, mail order selling would not differ greatly from the method which the company had been using. Prior to each selling season the company would distribute catalogues and booklets which described the current year's productions. The distribution of catalogues would be followed by a series of letters explaining the advantages of the mail order method of selling films. Emphasis would be placed on economy, efficient service, quality of product, and especially on the excellent reputation of Puritan Films, Incorporated. Advertising materials and accessories would be sold in a like manner. Little effort would be directed toward opening new accounts. The owners of the company favored an occasional effort in that field, but believed that much could be accomplished by word-of-mouth advertising.

A few days following the issue of catalogues, sales contracts with attached lists of picture blocks would be mailed to prospective purchasers. As a rule these blocks would be made up of complete programs.[3] Complete program service would effect considerable saving in the exhibitor's transportation costs, and naturally would add to the sales volume of Puritan Films, Incorporated. Much discretion would have to be exercised in submitting sales contracts. If two or three equally large competing buyers were located in the same community, however, all three would receive similar contracts. The first contract signed and returned would be accepted by the company. In negotiating

[3] See Universal Pictures Corporation, page 273.

sales, all bartering would be carried on by correspondence under the direct supervision of the sales manager. Little difficulty was expected from this usually troublesome factor, because prices to small exhibitors were fairly well standardized, and the problem of protection and run, as a rule, was not involved in this type of sale, for the reason that ordinarily there was but one theater in each town.

The allocation of play dates would not present a problem, since even under the regular sales method, designations of dates, in a majority of cases, were sent by mail. Disputes and adjustments, in some instances, might demand a personal call. Experience, however, had taught the company that in general such difficulties could be settled by correspondence. While the salesmen whom the company retained would confine their efforts almost entirely to the larger accounts, it would be their duty also to call on all small exhibitors located directly on their regular routes. In cases in which disputes could not be settled by correspondence, a salesman would be dispatched to act in the capacity of adjustor for Puritan Films, Incorporated.

In their consideration of mail order selling, the partners weighed certain factors. If competitors did not follow a similar plan, Puritan Films, Incorporated, might not succeed in this method of selling. Regardless of competition, however, the partners believed that by passing part of the resulting distribution economies to the exhibitors, by rendering excellent service, and by fair treatment of exhibitors the proposed plan would prove successful. They believed, furthermore, that independent exhibitors preferred to patronize independent exchanges provided the pictures secured through these exchanges were of a quality equal to that of the films produced by the large fully integrated companies.

One of the company's executives questioned the attitude of small town exhibitors toward mail order sales methods. In his opinion such exhibitors, especially those who operated their theaters on the basis of a family enterprise, anticipated eagerly the regular visits made by salesmen, who in many instances represented the exhibitor's only contact with the motion picture industry and with general business activity. Another problem to be met in selling to small town exhibitors by mail order resulted from the inability of some of these exhibitors to express their thoughts in writing.

Despite these recognized obstacles, Mr. Blazier and Mr. English were inclined to favor the plan. They believed that a trial would not seriously injure the business, and in the event of failure it would not be difficult to recruit a new salesforce. They believed also that the effected economies would more than compensate for any loss in sales volume. Furthermore, because of the constant sales effort made possible by mail order selling they anticipated a substantial increase in late season business and spot bookings. Finally, since the motion picture industry was in a state of flux, the partners believed that the time was opportune for experimentation with innovations.

COMMENTARY: The company's plan of selling films by mail was proposed in response to a desire to secure distribution economies and to retain profitable small-order business. It appears that the growth of theater chains made the independent theater sales of increasing importance to Puritan Films, Incorporated. It would be to these theaters that the sales for Puritan films would be the smaller, the costs of selling probably the greater, and the margins likewise the smaller. The real issue in the case deals with the applicability of the proposal as a means of meeting the specific problem suggested. A number of questions arise. First, could the company follow this policy alone? The answer to the question is "Yes" in some instances in which an exhibitor patronized Puritan Films, Incorporated, almost exclusively, when the price range was mutually acceptable and not subject to material change, particularly when flat rentals instead of percentage prices were to be used, and finally, when special pictures were not involved. In such cases, some measure of success might be realized. Otherwise, it is rather doubtful whether such a policy would be a success, and the company itself was somewhat dubious concerning the plan.

The executives contended that they intended to pass on to exhibitors the savings which would result from distribution economies. One might be concerned as to whether or not there would be sufficient savings to pass on. It must be borne in mind that the primary objective of the plan was not so much to increase the margin as to protect the margin. Furthermore, it might be difficult to show any real savings where pictures were sold individually. Where pictures were sold in blocks, the problem would not be so difficult, but comparisons would be hard to make. It will be noted that the case does not give any estimate of what the cost of mail-order selling, compared with that of direct selling, would be.

The company intended to rely upon excellent service and fair dealing, to retain its patronage. Fair dealing, presumably, had been the practice of the company in the past. There is no indication that the exhibitors had any complaint to make about the service. There is no reason to believe that deliveries were not prompt; and if there were any complaints relative to the condition of the film, this could not be remedied by a change in the sales plan.

It must be borne in mind, further, that salesmen would still be essential. They were required to call upon the large accounts, to develop new accounts in the main, to sell special pictures, and to settle disputes. It is also indicated that salesmen were expected to call upon such small exhibitors as were located on their direct routes.

The plan failed to give the company personal contact with the buyers. The case suggests that small buyers were particularly anxious to have this personal contact. It would be interesting to know whether or not Puritan Films, Incorporated, could retain its accounts by mail when in competition with other companies making direct personal calls. It is not difficult to understand that many such accounts would be lost to Puritan Films, Incorporated, under these circumstances. It may be noted further that the company had relied upon a film broker in the New Hampshire territory. It was the company's intention to retain this service, which it believed to be highly desirable. It should be observed, however, that it was not believed that film brokers could be relied upon generally. In any event, the success of this particular broker was due to his close personal relationship with the small exhibitors.

Finally, the plan offered no special relief relative to the problem of spot booking. Such sales were not likely to be made as a result of personal calls, in any event, and presumably had been made in the past as the result of telegraph or telephone calls.

In the light of these facts, it would not appear that the proposal is to be recommended.

November, 1929 H. T. L.

SIDLEY PICTURES CORPORATION[1]

PRODUCER AND DISTRIBUTOR—MOTION PICTURES

PRICING—*Sound Pictures Sold on a Percentage Basis.* A producer and distributor of motion pictures, when it began producing sound films, was faced with the problem of fixing an equitable price for them to exhibitors, since the cost of producing sound pictures and the possibilities of profits to the exhibitor were greater than for silent films. The company's sales manager decided to provide in each contract for an equal split of all gross receipts in excess of an amount consisting of the theater's operating costs, the flat rental or guaranty agreed upon, and an allowance of one-half the rental or guaranty. He believed that this method of pricing would secure for the distributor an additional income for sound pictures with the least exhibitor opposition.

(1928)

In the summer of 1928, the Sidley Pictures Corporation, a producer of motion pictures of high quality, expanded its production to include sound versions of its pictures for the 1928–1929 season. The company distributed its product through its own exchanges to exhibitors in the United States. With the new policy in effect the sales manager of the company was confronted with the problem of pricing sound pictures both to new accounts and also to exhibitors who had previously contracted for the silent product but who were now equipped to use sound pictures in their theaters.

Usually a film was not sold outright to an exhibitor, nor was it rented or leased in the strict sense. The distributor merely granted a license to an exhibitor to project a film upon his screen and lent him the necessary positive print. All reference to price, therefore, alludes to the cost of securing the necessary license to exhibit specific motion picture films for a stipulated period of time in a particular theater.

In the spring of 1928, the company had prepared its schedule of silent productions to be released during the subsequent season. These pictures were classified into three groups: roadshows, special productions, and regular releases.

[1] Fictitious name.

The selling campaign was launched in May on the same basis as in previous years. Salesmen visited exhibitors and offered the company's entire output made up in blocks which conformed with the group classification. Each salesman attempted to place as many of the pictures as possible with each exhibitor in order to secure the fullest representation and to minimize the necessity of expending additional selling effort later in the season. By the first of July the company had placed and approved a large number of contracts, which represented a substantial proportion of the total rentals expected for the year.

Almost simultaneously with the launching of its initial sales campaign the Sidley Pictures Corporation decided to convert its silent pictures to a sound or all-talking basis and secured a license under Western Electric patents to accomplish this object.

This decision necessitated a revision of the product classification upon which the season's pictures were being sold to exhibitors. Under the modified arrangement the product fell into four distinct groups: roadshows, all-talking pictures, pictures with synchronized music and sound effects, and a small block of silent pictures. Silent versions were also retained for all the sound and talking pictures appearing under the first three groups of the new classification.

Under the new arrangement an exhibitor who possessed sound equipment was confronted with two alternatives. He could either play the product silent under his existing contract or he could revoke that contract and open negotiations for the sound pictures under the new classification.

Selling of the new product was commenced in July. At that time between 500 and 600 accounts out of the 10,000 which constituted the company's market had wired their theaters for sound. This group was made up chiefly of larger theaters; sales already made to them constituted a substantial portion of the year's potential income. The number of wired houses was constantly growing, so that the problem of transferring accounts to a new basis for sound pictures was one of increasing magnitude.

The pricing of silent pictures had been based principally upon precedent. The salesman and exhibitor bargained within a wide price range and usually settled upon a price which closely approximated what the exhibitor had paid in the past for a comparable

product. The salesman was constantly trying to raise this price and the exhibitor to keep it down. As local factors, such as theater competition, increases in population or patronage, and other noticeable changes became operative, the bargaining position of one or the other of the two parties was strengthened and price very roughly recorded the fact.

It was evident to the sales manager that with the advent of sound accompaniments to motion pictures an entirely new set of factors was introduced which increased the cost of production and affected the pricing situation. In the first place, plant and operating costs were increased by the expense of new sound stages and studios, the licensing fee on sound equipment, and a royalty charge based on the footage of sound film produced under the license. In addition to these major items, other production costs incurred were: new laboratories for developing sound films; new printing equipment for producing positive prints from sound negatives; the three types of negatives required for the three kinds of film produced, silent, sound on film, and sound on disc; and the employment of new types of personnel, such as actors with trained speaking voices and elocutionary ability, technicians to handle new equipment, and dialogue writers to supplement scenarists. Additional distribution expenses were: the increase in number of positive prints caused by the three types of film needed; reproducing equipment in laboratories for use in testing, cutting, and editing sound positives; and reproducing equipment in key city exchanges for testing and inspecting prints and for previewing films for exhibitors.

A second factor arose in connection with the reception which sound pictures were having at the box office. This condition was reflected in the increase of exhibitors' gross receipts when they played sound in place of silent pictures. The exhibitor also had an increase in his operating overhead, consisting of the amortization of the installation cost of sound equipment plus a monthly service charge for its use.

The sales manager of the Sidley Pictures Corporation believed that the increase in price for sound pictures not only should cover the additional production costs involved but also should allow the company to share in the increased profits which sound pictures were yielding exhibitors in spite of their larger overhead expenses.

The same terms of sale could be used in selling sound pictures as had been employed for silent productions. These terms were either a flat rental or a percentage of exhibitors' receipts. Under the first of these methods, the exhibitor paid a flat sum in return for the privilege of exhibition. Percentage arrangements varied from a simple split of all gross receipts, beginning with the first dollar taken, to complicated agreements which provided a minimum guaranty to the distributor plus different percentage splits of the gross receipts in excess of a specified amount. Usually if more than one percentage was employed, the proportion going to the distributor increased as the gross receipts exceeded stipulated sums. The most common percentage arrangement provided for a guaranty and an equal sharing of all gross receipts in excess of a certain amount.

Experience had shown that a majority of exhibitors preferred the flat rental basis for the average run of silent pictures. They reasoned that by paying only a flat sum they assumed the risk of the picture's patronage appeal and reaped all the profits when their judgment was correct. In spite of the losses sustained on certain productions, they were convinced that on the average their profits were greatest when they leased films on a flat rental basis. Exhibitors objected to sharing profits with the distributor, and in addition believed that the method furnished distributors with too much confidential information relative to their private business. Certain exhibitors could be induced to play special productions on a percentage basis, but even these were often undertaken reluctantly.

Whichever method of sale was employed for sound pictures, it became necessary to select a basis upon which to fix a price differential over silent pictures sold on the same terms. All producers of sound pictures were confronted with this major problem and were attempting its solution in different ways.

A method used by one distributor was to apply an arbitrary percentage increase to the flat rental price which had been agreed upon by an exhibitor prior to the wiring of his theater. These percentages ranged from 25% to 300%. Obviously, so wide a possible difference in price increase left so much room for bargaining that the actual differential agreed upon bore slight relationship to the actual increase in gross receipts which sound pictures were supposed to bring to a particular theater.

Another distributor used a similar method within narrower limits. For small theaters he sought an increase of 100%, while for larger houses he accepted differentials as low as 40%.

The use of arbitrary percentages had two serious disadvantages. First, they were applied to prices formerly paid for silent product, which were based largely upon precedent. Second, the range of percentages was so great that bargaining became too dominant a factor in determining the price of sound productions.

Another distributor also used former prices as a basis from which to start computations. Instead of applying an arbitrary percentage to this figure, however, he attempted to determine a percentage which would reflect the relative increase in gross receipts which sound pictures would bring to theaters of different sizes and types. To accomplish this purpose the distributor placed various sound pictures in several of his own theaters. He then compared the resulting gross receipts with similar figures for these same theaters when he had shown silent pictures of a comparable quality. The percentage increase in gross receipts he applied to the price paid for silent product in order to arrive at an equitable differential for sound pictures. If, for example, a theater which paid $300 rental for a silent picture and had gross receipts of $1,200 on its exhibition, then exhibited a comparable sound picture which yielded $1,740, the increase in gross receipts would be 45%. This percentage applied to the $300 rental would give a differential of $135 and a total rental of $435. It will be noted that film rental remained a constant percentage of gross receipts under this method. After some experimentation of this nature, the distributor found that sound pictures of the regular feature type increased gross receipts approximately 25% while special features often yielded a 40% or 50% increase.

The chief advantage in this method of pricing sound pictures lay in the fact that price increases were roughly proportional to the potential increase in gross receipts at the box office. On the other hand, the sales manager of the Sidley Pictures Corporation was not certain that such a method secured for the distributor the increase in price to which he was entitled. A very practical disadvantage also existed in the fact that increases in gross receipts varied substantially between theaters of different sizes and types and between different types of pictures in the same theater. The use of standard percentages would, therefore, be subject to error

when applied to specific situations. Whether this fact would seriously disrupt the use of such percentages became an important consideration.

A method which achieved results identical to those of the foregoing procedure was employed by a distributor who leased pictures on a percentage basis whenever possible. He sought to determine what percentage an exhibitor's average film rental was of his average gross receipts. He then attempted to persuade the exhibitor to play pictures on a percentage basis, using this average film rental percentage as the share of gross receipts which should go to the distributor, commencing with the first dollar received. Application of this method to the example given above shows that the rental of $300 would be 25% of the gross receipts of $1,200. Whatever the total income was, 25% of it would go to the distributor. If it were $1,740, the rental would be $435, as under the former method. No guaranty and no splits beyond a certain gross figure were involved in this arrangement and to this extent the basis of pricing was simplified. If exhibitors accurately set the percentage which their average rentals bore to average gross receipts, the necessity of estimating the additional income which sound pictures would yield was eliminated. Under this plan, also, both the distributor and the exhibitor shared in the success or failure of a picture beginning with the very first dollar of receipts.

The sales manager questioned the use of such a scheme on the ground that it involved persuading the exhibitor to play on a percentage basis but did not include the usual flat guaranty and split above a certain gross amount which such agreements regularly included. It was his belief that when an exhibitor did not have to guarantee a certain return to the distributor, the inclination was not to use aggressive sales promotion but to let the picture do its own exploitation work. This practice often had resulted in lower gross receipts than might otherwise be expected from percentage bookings. If a percentage arrangement was used, the sales manager was convinced that more could be secured for the distributor by a guaranty and split of gross returns above a specified amount than by the proposed method. This opinion may be substantiated by applying the most common percentage arrangement to the example previously cited. As a conservative estimate, a guaranty of only $250 may be assumed, a figure which

is \$50 less than the previous flat rental paid. If it is further assumed that an equal split was to be made on all receipts in excess of \$1,200 and if the picture yielded \$1,740, the exhibitor would pay \$250 plus half the average (\$1,740 — \$1,200) or \$270, making a total rental of \$520, which is an increase of \$85 over the previous method.

Whenever exhibitors could be induced to contract for sound pictures on a percentage basis, distributors generally preferred such an arrangement. The chief difficulty usually was encountered in persuading the exhibitor to agree to percentage bookings of any kind. If this prejudice was overcome, a common arrangement was a guaranty plus a split beyond a certain gross figure, similar to that described on page 328. In common practice, when that basis was used, the guaranty was equal to or less than the flat rental formerly used and the limit beyond which the split occurred often was close to the total gross receipts realized from comparable silent pictures. This meant that if the receipts from sound pictures were no larger than from silent films, the exhibitor's film rental was no greater, and was possibly less, than under former conditions. As sound pictures yielded more than their predecessors, however, the exhibitor paid half of this difference in addition to his guaranty.

Such an arrangement halved the risk and the profits of any increase in gross receipts between the exhibitor and distributor. Often the exhibitor chose to assume this risk alone with the prospect of exceptional profits if his judgment was sound. On the other hand, the distributor believed he was entitled to a part of such profits and, therefore, willingly accepted the risk which percentage arrangements involved. With such eagerness for percentage arrangements on the distributor's part, the amount of guaranty, the limit at which the split should start, and the percentage of the split itself automatically became factors to excessive bargaining unless previous rental agreements could be used as a guide.

The sales manager of the Sidley Pictures Corporation was aware that some exhibitors would refuse to take the new product on anything but a flat rental basis, but he was of the opinion that the distributor was entitled to a share in whatever increased income sound pictures would bring to exhibitors. To insure such participation, the sales manager believed that the determina-

tion of a figure above which all receipts would be split between the distributor and the exhibitor should become a definite part of every contract. Such a procedure, he believed, should be applied even to the contracts for flat rentals.

The sales manager had evolved a procedure which he deemed equitable to both parties to the contract. It provided for an equal split of all gross receipts in excess of an amount made up of three items, the first of which was the theater's expense exclusive of film rental cost. To this item was added the flat rental price or the guaranty, depending upon the nature of the selling arrangement. This second item represented the assured gross income to the distributor from which all his costs of distribution must be deducted before any profit could be shown. The third and final item was an allowance of one-half the rental or guaranty, as the case might be, which constituted a profit accruing to the theater before any sharing commenced. If, for example, a theater with a house expense of $1,200 paid a flat rental of $300, the split would then occur on all gross receipts in excess of $1,650 ($1,200 + $300 + $150). If the same theater agreed to guarantee $250 (guaranties were sometimes equal to and sometimes less than flat rentals), the split figure would then be $1,575 ($1,200 + $250 + $125). On the assumption that this theater yielded $1,740 on the run, it would then pay a fee of $345 ($300 + ½ the overage of $90) under the first arrangement and $332.50 ($250 + ½ the overage of $165) under the second method.

The sales manager pointed out that exhibitors playing on a percentage arrangement often inflated their house expense figures in order to increase as much as possible the figure at which the split was to occur, thereby swelling the preliminary profit accruing to the theater before any sharing occurred. In spite of this fact, he believed that an allowance for profit of half the rental or guaranteed amount had to be included in the calculation of a split figure in order to make it seem attractive to the exhibitor.

The advantages of this method to the distributor arose chiefly from the fact that it educated the exhibitor to share the risk and profits of extraordinary gross receipts with the distributor. On the other hand, many exhibitors would refuse to use anything but the straight flat rental, knowing that the introduction of a split figure would set a precedent for percentage arrangements which would mean permanent curtailment of excess profits.

Most exhibitors would foresee this dilemma and, if forced to use a split figure, would attempt to pad their expense figures as much as possible in order to yield themselves hidden profit before the gross receipts reached the amount of the split figure.

The sales manager believed that whatever type of price differential was adopted, exhibitor opposition would be encountered. The problem resolved itself into a question of selecting a method, the terms of which would most easily secure for the distributor an additional income for sound pictures.

Commentary: Several issues of interest arise in this case. The first involves the question of the advisability of a producing company's instituting a special selling policy to use in making sales to less than 6% of its 10,000 accounts. In this particular case the 6% of the accounts probably provided over 70% of the income, a fact which lends considerable justification to the proposal.

The problem of determining the price at which sound pictures should be sold was one involving many difficulties. The extent or permanency of the novelty appeal of sound pictures was unknown. The amount of talent available for them was unknown. The availability of suitable story material was equally uncertain. No judgment could be formed as to the rate of technical improvement likely to occur. There was lacking, moreover, any exact knowledge as to the relation between the cost of producing sound pictures and that of producing silent pictures. It is doubtful whether any information was available as to the cost of developing synchronizing equipment, even to the degree of excellence prevalent in 1928. In consequence of these factors it was extremely difficult to base the prices either of the equipment or of the pictures on any semblance of a cost figure. It would have been unwise under the circumstances to attempt to relate prices to costs, even had costs been known. The natural thing for a distributor to do would be to secure as high a price for his sound pictures as he could get for them, assuming always that these prices were not so high as seriously to embarrass the exhibitor.

It may be pointed out, however, as an historical fact that the prices of sound pictures were probably placed too high. It was reported that many exhibitors found it necessary to close their theaters because they were unable to pay the prices demanded. It is certain that the distributors found it necessary to convene a conference for the purpose of providing relief.

A second issue is the question of whether or not higher initial charges were warranted at all. Several arguments may be advanced to the contrary. High prices would be likely to incur the ill will of the exhibi-

tors. It was possible that sound pictures were only a novelty and if so could not be expected to remain long in public favor. Furthermore, an increase in the admission price charged by exhibitors was in many cases impossible and in no instance could such an increase be great. The substantial increase in theater overhead expenses, moreover, might in considerable part offset the increase in box office receipts. The truth of the assumption made by distributors that box office receipts would be so largely increased as to augment the net return to the exhibitor was not proven. The fact that a "buying revolt" resulted in delayed buying and in some instances definitely organized opposition lends support to these arguments.

On the other hand, it is clear that the costs of distribution and of production had substantially increased. It is sound policy, furthermore, to charge higher prices on novelty or style products than on staple lines, and sound pictures fell into the former classification. It is probable that exhibitors would expect some increase in the prices charged for such pictures. On the whole it may be suggested that higher prices were justified, but that in many cases distributors raised prices more than public demand warranted.

The next issue involved is that of whether or not a percentage pricing should have been adopted in lieu of a flat rental policy. Exhibitors had long objected to percentage pricing. A fundamental objection was based on a reluctance to divulge confidential information. It was argued that such information would subsequently be used by the distributor as a basis for higher prices. It was further urged that it would suggest to the distributor that he establish his own theater in the same territory. In any event it could be contended that it gave cost and other figures to competitors, particularly in those cases in which the distributor already operated a chain of theaters.

The exhibitor objected also because percentage pricing required some form of checking on the part of the distributor, in order to secure accuracy and honesty. Again, percentage pricing was objected to on the ground that the distributor shared in the increased profit if any developed, but, because he usually demanded a guaranty, he did not share in the losses. Another reason exhibitors preferred flat rentals was that many of them preferred to assume whatever risks there might be and to take for themselves the rewards of any promotional efforts, and to do this on a predetermined cost. This argument is somewhat weakened by the fact that under any circumstances distributors do undertake a large part of the sales promotional work, and that the exhibitors expect them to do it.

The arguments for percentage pricing, on the contrary, are very substantial. Data relative to box office receipts and expenses for any particular theater are usually fairly definitely known by any distributor,

and it cannot, therefore, be urged that percentage pricing would reveal any great amount of information not already in the possession of the distributor. Furthermore, the factors of uncertainty in the situation already enumerated were so substantial that it is probable that greater fairness would result to both distributor and exhibitor if some form of percentage pricing were resorted to. Many instances exist where exhibitors who had consistently refused to buy silent pictures on a percentage basis were quite willing to buy sound pictures in this manner. In addition, the percentage schedule could be so arranged that the guaranty might be such as to place the distributor in effect in a position where he would share in the losses. It would, therefore, appear that percentage pricing was a justifiable move under the circumstances.

A final issue is that of determining the differential between sound and silent pictures. This was not an issue except when a sound version and a silent version of the same picture were produced. In such cases various methods of determining the differential were possible. One was to establish an arbitrary percentage of differential dependent somewhat upon the size of the house. This might be objected to upon the ground, first, that it would be based on mere precedent rather than on cost or receipt figures, and secondly, that it still left an undue opportunity for bargaining. A second possibility was that of basing the differential on the relation of film rental to gross receipts. An objection to this plan was that the exhibitors were inclined to be negligent in promotional work and to rely upon the name of the picture or of the star, or upon the advertising of the distributor to sell the picture. Another possibility was that of determining by test rather than merely by an expression of judgment, the potential difference in box office receipts. This was open to the objection that receipts would vary widely as between different theaters. A final possibility was to establish a somewhat arbitrary percentage as a result of bargaining between distributor and exhibitor. In effect this was usually the method pursued. Actually, until sound pictures had been tested by exhibition and the total costs as compared with those of silent pictures were known, any differential would necessarily be an expression of judgment.

It must, of course, be apparent that a mere change from flat rentals to percentage pricing would not necessarily affect the prices paid by exhibitors. The character of the guaranty demanded and the manner in which the split was operative would determine the actual amount paid by exhibitors.

November, 1929 H. T. L.

Shafer Pictures Corporation[1]

PRODUCER AND DISTRIBUTOR—MOTION PICTURES

PRICING—*Method of Checking Receipts Under Percentage Pricing Contract.* A motion picture producing company priced its pictures on the basis of a fixed percentage of the door receipts. In order to safeguard itself against unfair practices by exhibitors, the company had been accustomed to use one of the following methods of checking box office receipts: taking tickets at the door; making an actual ticket count after the box office had been closed; or checking the opening and closing box office ticket numbers. Difficulties in each of these methods caused the company to consider either dispensing entirely with the system of checking or adopting a new method.

(1929)

In June, 1929, prior to the opening of the motion picture selling season, it was apparent that percentage pricing[2] would become the accepted method of sale that year. With this fact in mind, the executives of the Shafer Pictures Corporation, a producing and distributing company, decided to improve its box office checking organization.

Since the beginning of the industry, producers and distributors had used some system of checking box office receipts to safeguard themselves against unfair practices by exhibitors who, because of unusual circumstances, purchased pictures on a percentage agreement. More specifically, they used this method to prevent box office thefts, the resale of cancelled admission tickets, and other similar practices.

The Shafer Pictures Corporation owned and operated studios in Hollywood, exchange offices in 32 key cities, and approximately 800 theaters of all types located throughout the United States. In the past, practically all sales had been made on a flat rental basis. The company had released some of its best pictures on a percentage basis, but because these had been relatively few, little thought had been given to the development of an efficient checking organization.

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[1] Fictitious name.

[2] See Sidley Pictures Corporation, page 325.

As was customary in the industry, the company had delegated checking to the managements of its various exchanges. As an exception to this practice, the box office receipts of road shows, in some cases, were checked directly by the home office. Checkers were not on the exchange's regular pay rolls. Each exchange office maintained a list of candidates who were available for duty at short notice. When working, checkers received $5 a day as salary, $5 a day for living expenses, and transportation to and from their destinations. The ordinary checker worked about three days a week. The uncertainty of this system prevented prospective checkers from accepting any other part-time position.

Few, if any, of the exchange managers of the Shafer Pictures Corporation had organized their checking service to the best advantage either of the company or of the checkers. It was not uncommon for a checker to receive instructions from two or three different exchange officials, and in some instances, different instructions from each. Little use was made of systematic routing to effect transportation economies and to give relatively steady work to the checkers. In many cases, two men were dispatched to the same city to cover simultaneous bookings. Occasionally, a checker was redispatched to the same theater immediately upon his return to the exchange. Because of these and other similar conditions, the company had found it difficult to obtain reliable and capable checkers.

Checking had been performed in various ways, but as a rule one of three methods was followed. The first method was to take tickets at the door; the second was to make an actual ticket count after the box office had been closed; and the third was simply to check the opening and closing box office ticket numbers.

From the distributor's standpoint, taking tickets at the door was perhaps the best plan. This method prevented dishonest exhibitors from substituting tickets of the same color as, but with a different serial number from, the ticket shown to the checker at the opening of the box office. Exhibitors resented this form of checking, however, principally because it supplanted their doormen, who were familiar with local ordinances and capable of detecting old tickets. In smaller communities the local doorman, because of his acquaintanceship, was valuable in maintaining a contact with the public. In relatively new theaters in small

towns, patrons were prone to look quizzically at a new doorman, especially when the regular employee was standing near-by. The situation might convey the thought of new management or receivership. There was a possibility that strange checkers would demand tickets of friends of the house, reporters, politically influential people, and other guests who held season passes. These people probably had never before been asked to show their tickets and naturally they would resent such demands.

Ticket counting, while more acceptable to the theater management and reasonably satisfactory from the company's standpoint, placed a serious hardship on the checker. As a rule tickets were torn in half by the doorman. By mistake, patrons were often given the half containing the serial number, and as a result the checker's task was made doubly difficult. This method required that all tickets be checked as to numerical sequence and then counted for totals in each price line. If attendance was light, the work was not difficult, but in cases involving 2,000 or more tickets, the counting task became long and laborious. For obvious reasons exhibitors prohibited checkers from taking the tickets to their rooms for counting. Box offices in general closed at 9:15, theaters at 11 p.m. This situation frequently resulted in the checkers' submitting false reports the figures for which were taken from the box office opening and closing numbers.

Checking the first and last ticket numbers issued by the box office had been the most popular and widely used of the three standard methods. It did not interfere with local theater management, nor did it reflect upon the exhibitor's character. Furthermore, it placed the checker in a more favorable position and did not present such a difficult task as did the other two methods. Obviously, however, this plan was not sufficiently exact to meet with all the requirements of the Shafer Pictures Corporation.

One of the junior executives suggested that the company might do well to view its independent exhibitors with less suspicion and place absolute confidence in their honesty and integrity in reporting their daily receipts. He based his argument on two major premises: first, he was convinced that exhibitors no longer were of a kind that would resort to the dishonest practices common in the past unless they resented the distributors' distrustful attitude; second, through the use of comparative figures taken from the company's own theaters of similar classification, a

fairly accurate check could be made without the exhibitors' knowledge.

Another executive argued along the same line, stating that in a majority of cases checkers were less reliable than their respective exhibitors. He mentioned several instances as proof of his assertion. It was common knowledge that checkers had resorted to various forms of theft, such as making agreements with the exhibitors and reselling tickets.

The president of the company was not fully convinced that checking could be dispensed with altogether. He was well aware of the inherent deficiencies in the existing methods and realized that in many cases the cost of checking had been exorbitant—often exceeding the company's total receipts. However, he did not possess the same confidence in the exhibitors' honesty as did his younger associates. Furthermore, it occurred to him that in view of the almost certain adoption of percentage pricing, the services of the checkers would be more essential than in the past. He believed that a new method of checking together with a more efficient checking organization might solve the problem. He did not, however, offer any suggestions as to a definite solution of the problem.

Commentary: None of the methods of checking receipts outlined in the problem is likely to prove satisfactory. It is believed that checking is at best unsatisfactory. In many instances there is an increasing tendency to accept the word of an exhibitor as to his receipts, in the belief that most exhibitors are inherently honest and that the reports are reasonably accurate. Furthermore, in the highly competitive state of the industry distributors can ill afford to incur the loss of exhibitors' goodwill. One means of protecting a distributor's interests in the case of exhibitors whose honesty is doubted is to sell to such exhibitors only on a flat rental basis, or to secure protection by obtaining an adequate flat guaranty high enough to insure to the distributor a reasonable return.

The emergency of this problem suggests that percentage pricing has become a rather definite method of sale with many distributors. As pointed out in the commentary on the case of the Sidley Pictures Corporation,[3] percentage pricing became general with the introduction of sound pictures. It is probably true that with the development of more adequate control systems and records the distributor has obtained much more complete information upon which to base a fair percentage

[3] See page 333.

contract with any given exhibitor, and also upon which to judge the accuracy of that exhibitor's returns. The actual operation of theaters by distributors has tended in the same direction. One theater has been experimenting with the use of turnstiles, similar to those used in subways, as a means of checking box office receipts. Exhibitors are becoming more reconciled to percentage pricing as the recognition grows that most distributors intend to deal fairly with them, and as they realize that the particular form of percentage contract is really the crux of the problem in any event.

The commentator believes that the Shafer Pictures Corporation would have been well advised to discontinue any elaborate system of checking box office receipts.

November, 1929 H. T. L.

Universal Pictures Corporation

PRODUCER AND DISTRIBUTOR—MOTION PICTURES

Market Selection—*Increasing Sales of Motion Pictures for Nontheatrical Exhibition.* The advisability of increasing sales to nontheatrical exhibitors was considered in 1926 by a producer and distributor of motion pictures, although the full possibilities of the field were unknown and there was definite exhibitor opposition to such sales.

(1926–1928)

In view of the success which the Universal Pictures Corporation had had in its sale of films to nontheatrical exhibitors, the executive in charge of sales considered in 1926 the establishment of a separate department for the purpose of increasing these sales. Because of subsequent opposition on the part of some of the company's theatrical accounts, however, the company questioned the advisability of adopting a policy of promoting sales to its nontheatrical accounts.

The Universal Pictures Corporation, with studios in California and main distributing offices in New York City, was one of the oldest and largest companies in the industry. The distributing organization maintained 40 exchange offices in the United States and Canada, and 26 foreign offices. While the Universal Pictures Corporation sold to all classes of exhibitors, sales to the smaller theaters in the country exceeded its sales to the large first-run theaters.

For a number of years, the company had been increasing its sales to nontheatrical accounts in the several exchange territories. This business had grown in response to a demand on the part of nontheatrical exhibitors, including schools, churches, clubs, and public institutions, such as asylums, for films used in entertainment. Because of difficulty in distinguishing nontheatrical from theatrical accounts, the company lacked definite knowledge of the amount of nontheatrical sales. In 1926, however, the volume of such sales was estimated to be between $100,000 and $150,000, or approximately 1% of the company's total sales in the United States and Canada. The company believed that it could profit-

ably increase its sales in this field. In order to increase the sales to this type of exhibitor, it would be necessary first to segregate such accounts and then engage in additional sales promotion activities in that direction.

The proposed plan was communicated to the distributing organization. While the exchange managers recognized the possibility of increasing sales to nontheatrical accounts, they questioned the advisability of developing this market. Their attitude was largely the result of opposition on the part of their theatrical accounts, as the exchanges had no difficulty in managing the nontheatrical business. The opposition of the exhibitor to nontheatrical exhibition was based on the belief that it reduced the patronage at his theater by satisfying elsewhere the demand for motion picture entertainment. In his desire to protect this patronage, he would often complain to the film salesman and the exchange manager concerning such distribution in his locality. The effect of these complaints was to discourage the exchange manager from the solicitation of nontheatrical business, even though it increased the profits at his exchange. Selling to nontheatrical accounts differed but slightly from selling to theaters. Only feature pictures and comedies were sold.

The price to nontheatrical accounts was largely determined by what the account could pay. It had been found that public institutions were restricted by budget to a certain definite amount for entertainment, and a sale to such an institution could be made only if the price of the film were reduced to conform to the budget. The films desired were usually the older pictures and it was possible to quote individual prices which were lower than were ordinarily quoted to a theatrical exhibitor. No films were released for nontheatrical exhibition prior to the release date for theatrical showings in that particular city or territory, nor were sales made to institutions for exhibition in competition with a regular theatrical account.

While the revenue derived from sales to nontheatrical accounts was, on the average, less per film than that from sales to theatrical accounts, the executives of the company considered it to be net revenue. Although there was no allocation of sales expense to nontheatrical sales, it was thought that the expense involved was slight in view of the belief that little additional time and effort were required for a salesman to call upon a nontheatrical account

while in a city to visit the theatrical exhibitors. Furthermore, a large proportion of the business was handled directly by the exchange manager in response to mail inquiries from the institutions addressed to the exchange or to the New York office. The exhibition was booked in the same manner as a theatrical showing except that it was more often possible to substitute a picture other than the one requested. The fact that the pictures were older and therefore less in demand made booking less complicated.

In the event that a new department was established, nontheatrical buyers, as recorded in past sales, would be solicited by direct mail with a booklet and a series of letters, from both the main office in New York and the local exchange. Inasmuch as the largest cities were the location of many institutions using films, such as libraries and museums, it was also planned to assign a number of salesmen—two in New York, one in Chicago, and others at several other important exchange centers—to the work of securing new prospects and of selling to nontheatrical accounts exclusively. The company was unable to foretell the extent to which the nontheatrical sales might be increased; it was planned to expand the department as conditions warranted. No changes in the booking and physical handling of the pictures were contemplated. Executives of the company believed that a separate department might induce additional interest in the nontheatrical business on the part of the exchange managers.

The opposition of theatrical exhibitors and the effect of this opposition upon the exchange managers was believed by the company to be of great consequence, and accordingly the exchange managers were instructed to take all precautions to protect exhibitors. By distributing to nontheatrical buyers only those films that were not desirable for theatrical exhibition because of the date of release, and by selling only when exhibitors had no objection, the company believed that no ill will would be engendered. The probability of obtaining additional revenue from nontheatrical sources was considered worthy of recognition and of more attention than had been given it. A separate department, consisting of an executive and one assistant, was, therefore, established at the main offices under the supervision of the general sales manager. This department would carry on sales promotion, and would control the sales to nontheatrical accounts by the several exchanges.

In 1928, considerable agitation developed in certain territories in connection with the sale of pictures to nontheatrical accounts. The following quotations from the *Film Daily* indicate the attitudes of the exhibitor and the Federal Trade Commission on this question:

> Officers of the Oklahoma Exhibitor Unit are preparing to carry out the mandate of the recent convention against nontheatrical competition and are now studying the situation. The convention denounced nontheatrical competition and exchanges serving them. *Film Daily*, April 15, 1928.
>
> Columbus—Nontheatrical competition can be restricted only in specific instances, because unified action against nontheatrical exhibition clashes with the Sherman Act, the Ohio Exhibitor Unit concluded at its convention here. *Film Daily*, November 25, 1928.
>
> Efforts of the industry made at the Trade Practice Conference in New York in October, 1927, to have service of films to nontheatricals branded as unfair practice were balked by the Federal Trade Commission which disapproved the resolution. The Commission's action was not taken as an endorsement of nontheatricals but rather a disapproval of the resolution on the ground that it was illegal. *Film Daily*, December 27, 1928.

Excerpts from the proceedings of the Trade Practice Conference for the Motion Picture Industry referred to in the above quotation, which was held at New York City, October 10–15, 1927, follow:

Rule 18

(Formerly distributors' Resolution No. 6)

Whereas, throughout the United States today more than 1,500 public, private, and charitable sectarian and non-sectarian institutions for caring for "shut-ins" are showing motion pictures; and such motion picture programs are furnished to these various institutions by national and regional distributors through the various film boards of trade under a plan whereby the responsibility for such distribution is divided among all members of each board; and in most instances such motion picture programs are furnished free of charge to such institutions as orphan asylums, homes for the aged, tuberculosis hospitals, and institutions housing war veterans; and

Whereas in some cases they are furnished upon payment of the postal or express charges to ship and return the films, and in other instances where institutions have appropriations available with which to purchase entertainment for the inmates, nominal charges are made; and

Whereas in all instances motion picture films are furnished to such institutions with the understanding that they are to be shown only to

the inmates and attendants of their respective institutions and that the general public is not to be admitted either free of charge or for an admission charge: Now therefore be it

Resolved, That the admission of the public, either free of charge or for an admission charge, to any such motion picture entertainment or performance is an unfair trade practice and unfair competition to theater owners; and

Resolved, That the showing of motion pictures in such institutions where the public is not admitted, either free of charge, or for an admission charge, is a fair trade practice.

Exhibitors' Resolution No. 1

The competition from schools, churches, and like institutions is sought to be eliminated by exhibitors' Resolution No. 1, which, as amended and finally passed, is intended to prohibit producers from contracting for the exhibition of pictures at any place where motion pictures are shown to the public, if such exhibition is found to be in competition with a regularly operated motion picture theater. The question of whether such exhibition does so compete is to be determined by arbitration. Educational and scientific films are specifically exempted. From the record it appears that films of the kind in question are sold to such tax-free institutions at prices less than those charged to established theaters.

The wording of the resolution is not as clear as it should be. The situation presented is somewhat similar to that which exists between the itinerant merchant or peddler and the established retail dealer, relief from which is sought in the various States by providing for the collection of a large license fee from itinerants.

The legality of the purpose of the resolution is questionable. It may be regarded as in restraint of trade, although the trade involved seems neither material in amount nor consequential in character. On the contrary, however, it may be legal for an industry to agree on a classification of customers. This matter, in some form, will probably be considered with the revised contract. The resolution reads as follows:

Resolved, That the practice of distributors contracting for the exhibition of motion pictures known in the trade as "entertainment," as distinguished from educational or scientific pictures, at schools or churches, or any other places where motion pictures are shown to the public, found by an impartial arbitration body to be in competition with any regularly operated motion picture theater, is unfair trade practice.

(Adopted without objection as a resolution of the conference, p. 343.)

The following excerpt is from a suit brought by the United States against the Motion Picture Theater Owners of Oklahoma, in the District Court of the United States for the Western District of Oklahoma, in 1928.

II

Purpose of Petition

This petition is brought under the provisions of Section 4 of the Act of Congress of July 2, 1890, entitled, "An Act To protect trade and commerce against unlawful restraints and monopolies," (26 Stat. 209), commonly known as the Sherman Antitrust Law, to prevent and to restrain the aforesaid defendants from further engaging in this district and elsewhere in the United States in violation of Section 1 of the said Act of Congress, in the conspiracy in restraint of interstate trade and commerce in motion picture films, which is hereinafter more particularly described.

VI

The Conspiracy

The defendant and certain individuals, each well knowing all the matters and things hereinbefore alleged, unlawfully have engaged in a conspiracy in restraint of said interstate trade and commerce in motion picture films so carried on as aforesaid by said distributors and by said exhibitors of motion pictures in the United States; that is to say, a conspiracy now here described in restraint of and which throughout the period of time herein mentioned in fact had unlawfully restrained and is now restraining interstate commerce, to wit:

Since on or about February 13, 1928, the defendant and certain individuals have restrained the aforesaid interstate trade and commerce in motion picture films in accordance with and pursuant to an understanding and agreement between said defendant and certain individuals:

To prevent every "nontheatrical" exhibitor of motion pictures from securing said films and said film service from any exchange located at Oklahoma City, Oklahoma, hereinbefore described, or elsewhere.

And the defendant and certain individuals acting in accord—with and pursuant to an understanding and agreement between said defendant and said individuals and intending to prevent every nontheatrical exhibitor of motion pictures from securing said films and said film service from said exchanges in Oklahoma City, Oklahoma, or elsewhere, have—

a. Threatened and suggested to said exchanges that the theaters which are represented by the individual members of the defendant corporation would discontinue service from any said exchange serving said "nontheatrical" exhibitors;

b. Threatened and suggested to said exchanges at Oklahoma City, Oklahoma, that the theaters which are represented by the individual members of the defendant corporation would not deal with any of said exchanges serving any of said nontheatrical exhibitors;

c. Adopted a resolution to fight exchanges serving nontheatrical exhibitors;

d. Threatened and suggested to the said exchanges that the theaters which are represented by the individual members of the defendant corporation would refuse to arbitrate before the Board of Arbitration (as provided in every Standard Exhibition Contract) all disputes to which any of said exchanges serving nontheatrical exhibitors were or should be parties;

e. Urged the said exchanges at Oklahoma City, Oklahoma, not to deal with the said nontheatrical exhibitors; and

f. Urged the said exchanges at Oklahoma City, Oklahoma, not to deal with the said nontheatrical exhibitors, and attempted to induce and coerce the said distributors to agree not to serve the said nontheatrical exhibitors; and

g. Threatened to distribute to members of the defendant corporation the names of all exchanges serving said film to nontheatrical exhibitors.

The defendant and certain individuals in the manner and by the means aforesaid have been and are engaged within the Western District of Oklahoma and elsewhere in a combination and conspiraçy within the United States in restraint of trade and commerce among the several States in motion picture films in violation of the Act of Congress of July 2, 1890, entitled "An Act To regulate trade and commerce against unlawful restraints and monopolies."

Officers, directors, members, and employees of the Oklahoma Exhibitor Unit are restrained from coercing distributors to refuse to deal with or cease to deal with nontheatricals, and from distributing or threatening to distribute to members of the association, lists naming distributors serving nontheatricals, in the consent decree filed in Federal Court at Oklahoma City.

The final outcome of this suit is indicated by the following quotations from the *Film Daily:*

> The decree disposes of the Department of Justice conspiracy case against the exhibitor association, which charged the organization had entered into the conspiracy to restrain trade through preventing nontheatricals from securing films. The action was brought under the Sherman Antitrust Law. *Film Daily*, December 28, 1928.
>
> Injunction secured by the Department of Justice in the consent decree in Federal Court in Oklahoma City is a permanent order. This ends any activities against nontheatricals so far as the association is concerned and disposes of the government's suit against the organization. *Film Daily*, January 7, 1929.

The Universal Pictures Corporation promptly discontinued selling to all nontheatrical accounts in the Oklahoma territory at the time that the exhibitors' association passed the resolution denouncing nontheatrical competition.

Commentary: In the face of widespread opposition on the part of customers of the Universal Pictures Corporation in the Oklahoma territory, the company's decision to stop selling pictures to nontheatrical accounts in that territory was wise. Though this action might result in some irritation on the part of such nontheatrical accounts, it may be said that a company is always justified in protecting the customers upon whom it relies for the bulk of its distribution as against other accounts.

The question may be raised, however, as to whether or not this opposition on the part of the theater owners was justified. On the whole, it must be said that such an attitude is open to question. Sales to nontheatrical accounts fall into two classes. First, there are those which are made to prisons and to other institutions in which those in attendance probably could not attend any theatrical performance. There can be no objection to the exhibition of pictures to such groups where the public is not admitted and where no admission price is charged. A different question arises with reference to the sales made to churches, schools, etc. Relative to such pictures it should be noted first that many of those attending such exhibitions never do attend theaters under any circumstances. Secondly, the pictures so shown are very frequently old pictures having little entertainment value for theatrical purposes. Third, many of the pictures are of the type exemplified by scenics and travelogues which most exhibitors feel have no particular place in the theater program. Fourth, the total number of persons attending such exhibitions has always been comparatively small. Fifth, persons seeing such pictures may very readily develop a habit of attending theater exhibitions.

Aside from these factors, the attitude of the exhibitors in this case was wholly defensive rather than aggressive. Instead of seeking to attract patrons by alert showmanship, they were seeking to protect profits by making it impossible for patrons to go elsewhere. Such an attitude is not progressive.

In this particular case it was not the actual facts as to the extent of such competition but rather the belief of the exhibitors as to its existence which had to be recognized by the distributor. Operating in a field in which competition was extremely keen, the company could ill afford to sacrifice the goodwill of any considerable group of exhibitors.

November, 1929 H. T. L.

Pathe Exchange, Incorporated[1]

PRODUCER AND DISTRIBUTOR—MOTION PICTURES

Sales Organization—*Centralization of Control through Reorganization of Exchange Office Management.* A company producing motion pictures distributed its product through 31 exchanges, each directed by a manager who was responsible for all contracts and collections within his territory. In order to centralize the control of the exchanges and thus secure closer supervision and economy, a manager of exchanges was appointed at the home office. A general reorganization of all branches with reassignment of duties brought about the desired centralization.

Sales Control—*Standardization of Branch Office Records.* A company distributing motion pictures through many branch exchanges gave each branch manager considerable latitude in the operation of his exchange, with the result that there was little uniformity in the organization or procedure of the several exchanges. Believing it desirable to consolidate the results of operations, the company installed a uniform system of accounting in the exchanges and adopted standardized statistical forms. The home office was then in a position to summarize and analyze the reports from the branches. These changes resulted in a substantial economy in the work of auditors, together with a closer control over sales.

(1928)

In April, 1928, Pathe Exchange, Incorporated, a producer and distributor of motion pictures for domestic and foreign exhibition, made several changes in the personnel of its management. The newly appointed manager of exchange operations planned a reorganization of the existing system of exchange management for the purpose of securing closer supervision and greater economy.

Pathe Exchange, Incorporated, produced and distributed a complete line of motion pictures, including special and program features, westerns, comedies, short subjects, and newsreels. Prior to 1927, the company had specialized in the production of short subjects, comedies, and newsreels. In that year, however, the tendency on the part of the larger companies in the industry to produce a complete line of product had caused Pathe Exchange,

[1] See also Pathe Exchange, Incorporated, pages 359 and 364.

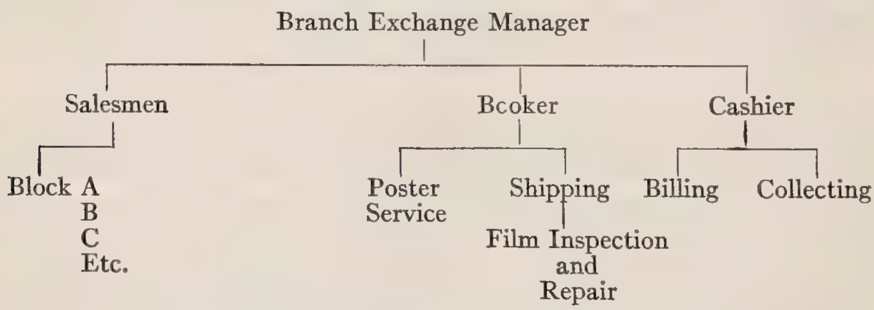
Incorporated, to take over facilities for the production of feature pictures.

The distributing activities of the company, like those of other motion picture companies, comprehended the sale of licenses to exhibit films for public entertainment, the advertising of the pictures, and the physical distribution of the films to the places of exhibition. The selling and physical distribution were done from branch offices called exchanges. "Exchange" was the term first applied to organizations formed by groups of exhibitors to exchange, somewhat in the manner of a circulating library, films produced by independent companies. Later, the term came to be applied to the branch office of a distributor. All the more important distributors maintained their own national exchange systems.

Pathe Exchange, Incorporated, maintained 31 exchange offices in the principal cities of the United States. The activities of an exchange included the sale of pictures and advertising accessories, booking pictures for exhibition, shipping, inspecting, and servicing films, billing exhibitors, and making collections. These activities were organized into three departments, as shown in Exhibit 1.

Exhibit 1

Exchange Organization of Pathe Exchange, Incorporated



Each branch exchange manager was responsible to the manager of exchange operations, who was in turn responsible to the general sales manager. The number of salesmen varied with the exchange. Individual salesmen were assigned to particular "blocks" or territories. Sales to large accounts in the territories were made by the exchange manager directly. The booker made arrangements for the playing of the pictures and directed the shipping and other work in connection with the physical handling of the positive prints. His department was also responsible for

the storing and issuing of advertising accessories such as posters. The booker was virtually an office manager. The cashier was in charge of the accounting work of the exchange, in addition to billing the exhibitors and making collections.

Prior to the reorganization of the control system, a branch manager was given considerable latitude in the operation of a particular exchange. The branch manager was responsible for sales in his territory subject only to check by district supervision, by traveling auditors, and by periodical reports to the home office in New York City. As a result, there was little uniformity in the organization or procedure of the several exchanges. Complaints were received from bookers and cashiers concerning the policies of the branch managers. The company believed that the existing method of control was expensive, and ineffective in selling and distributing activities.

The work of an exchange cashier was first studied to ascertain the possibility of securing more effective operation. Under the existing system, a form prepared in the booking department of the exchange notified the cashier that a print had been shipped to an exhibitor. The exhibitor was immediately billed, and the account of the theater debited. Theater accounts were kept in loose-leaf ledgers, and monthly statements of the accounts were mailed. Collections were credited to the accounts when made. The cashier maintained banking facilities at a local bank, and forwarded deposit slips to the home office, as substantiating vouchers for collections. He was provided with a contingent fund from which branch expenses were met; the fund was reimbursed by check from the home office to the amount of approved disbursements. Petty cash was an impressed fund. When a credit or adjustment was made by the branch manager, because of the failure of a picture to meet representations made at the time of sale or for other reasons, the cashier prepared a credit invoice. The accounting of the cashier was verified by a traveling auditor approximately once a month.

The manager of exchange operations believed that a carefully designed series of reports would reduce the work of the traveling auditors in checking the cashiers. The following reports were therefore specified for the cashier's department of an exchange: (1) A weekly statement of business, which included a report of billings, collections, and ledger entries, prepared by the cashier

and certified by the branch manager; (2) a daily cash sheet, showing the amounts received on picture rentals with subcolumns for rentals on particular releases; (3) a record of departmental disbursements accompanied by signed vouchers submitted weekly; (4) an employees' salary sheet substantiated by vouchers; and (5) a monthly report of customers' balances prepared from the ledger. All reports were to be approved by the manager. The cashier's department was also to prepare a daily shipping sheet which reported all rentals received and shipments made. Under the new plan all supplies exceeding $10 in value were requisitioned from the home office; requisitions were approved by the manager.

The booker was responsible for the playing arrangements of pictures. Sales contracts with specified dates of exhibition or arrangements to play so many pictures per week, month, or season constituted his authority for booking a print. A record of bookings contained the necessary information for the shipment of prints. Each of several prints was scheduled for continuous use, with allowance for delivery and return time. It was the booker's duty to keep the salesmen informed as to unspecified play dates in order that Pathe product might secure an early showing. A delay in exhibition caused cancellations and difficulties in selling new releases. Protection rights of the several theaters in a zone were carefully guarded by the booker. The necessary information for determining such rights was maintained in customers' service records for product prior to the current year. Such a record is shown in Exhibit 2.

The new system installed by the manager of exchange operations provided standardized forms to be used by the booker in each exchange. At regular intervals the booker sent to each exhibitor a notice of availability which listed the current productions contracted for by the exhibitor and the dates available for choice in exhibition. At the same time the exhibitor was reminded that, according to a provision of the Standard Exhibition Contract, failure to select exhibition dates within 14 days of the notice gave the exchange authority to designate such dates. In the event that an exhibitor failed to exercise his privilege of selection, a designation of play dates was sent to him. Applications for play dates received from exhibitors were confirmed on a special form. Notice of substitution or cancellation was furnished the home office and the exhibitor with the reasons therefor. A copy of

Exhibit 2

Customers' Service Record Kept by Pathe Exchange, Incorporated

PATHE EXCHANGE INC.
CUSTOMERS' SERVICE RECORD

PROTECTION

Plays After	No. Days	Plays Before	No. Days	Plays Before	No. Days

RATE SERVICE USED

No. Bought	No. Used To	Remarks on Dating

Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July
Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July

PRODUCT PRIOR TO 1928–1929

City	State	Acct. No.
Theater	Mail Address	
Exhibitor	Phone	Block
		Zone
How Ship	If Items Were Brought Forward From Prior Sheet Enter Date of Transfer Here	
Days in Advance		

Remarks:

Date of Contract	Contr. No.	No. Days	Rel. No.	Title	Available Date	Rental	Service Date	Form 24 No.	Date of Contract	Contr. No.	No. Days	Rel. No.	Title	Available Date	Rental	Service Date	Form 24 No.

each of the above forms was forwarded to the home office, where a record of bookings in each exchange was prepared. In addition, the booker forwarded a weekly report of spot bookings. A special report was required by the home office for immediate information on the play dates booked for a particular release.

As custodian of prints the booker requisitioned new prints, returned films to the laboratory, and maintained vault record cards for each print in storage. Exhibit 3 shows the form used in the requisition of new prints. A monthly report of inventory was sent to the home office. The inspector prepared a daily inspection report, which was submitted to the manager but not forwarded. The shipper prepared a daily report of late returns on films, which was turned over to the manager for decision as to the action to be taken by the booker, and a special report on refused shipments.

In the poster room of the exchange, a record of exhibitors' advertising orders for current product was maintained by theater. A monthly report of accessory inventory was submitted by the booking department to the branch manager for his approval; the original was then forwarded to the home office. Requisitions for accessories were submitted to the manager for approval.

Under the new system, no changes were made in the sales department of the exchanges other than the substitution of home office supervision for district supervision.[2] Each salesman at an exchange was furnished with a sales manual and an announcement of the product for the season. A price classification of product and price schedules for posters and accessories were available to the salesmen at the exchange. With this information and a work sheet for each theater, a salesman visited exhibitors to solicit contracts for picture rentals. It was extremely advisable for a salesman to secure satisfactory play dates in addition to selling the pictures. A contract signed by an exhibitor did not become effective until approved by the general sales manager at the home office of Pathe Exchange, Incorporated. Accordingly, each contract obtained by a salesman was forwarded by the manager of the exchange to the home office, accompanied by a contract enclosure embodying the recommendations of the branch manager as to the contract. The exchange maintained a record of sales for each theater, giving information as to the pictures sold to that theater, the prices secured, and the dates of showing.

[2] See Pathe Exchange, Incorporated, page 364.

EXHIBIT 3

PRINT REQUISITION USED BY PATHE EXCHANGE, INCORPORATED

Form 1022-1-29-10M Sets-8781

PATHE EXCHANGÉ, INC.
PRINT REQUISITION

Home Office Copy

Subject ______________________
(Features or Shorts)

Branch: ______________________
Date: ______________________

No. of Prints Wanted	Name of Subject	No. of Serviceable Prints on Hand	No. of Prints Discarded	To Be Compiled by Branch—Using Figures on Latest Available Photostat Dated ________ 192__						Remarks	Destroyed Prints Only
				Billings to Date		Unplayed to Date		Est. New Business			
				No.	Amount	No.	Amount	No.	Amount		
											Destroyed (or Lost) by: Theater: ________ Town: ________ State: ______ Date ______ Billed on Invoice No.: ______ On Statement of Business W/E ________ Description and Footage:

Approved:

Sales Mgr. ______________________

Mgr. Exchange Operations ______________________

Date: ______________________

Instructions

This Requisition will not be honored unless all information is properly recorded. Use one form for all Features including Westerns. Serials, Comedies and Shorts may be listed on one form.

Recommend Approval: ______________________

____
Branch Manager

Educational films were sold on order blanks which specified the entire product of the department with an agreement to execute a uniform exhibition contract upon preparation and delivery. Advertising accessories were also sold on order with payment on delivery. From nontheatrical account records maintained at each exchange a salesman received information relative to such accounts in his territory.

Each salesman submitted a daily report on the results of interviews, and a weekly traveling expense report for the approval of the branch manager. Salesmen were paid on a straight salary and expense basis.

At the beginning of the selling season, a convention was held in Chicago at which sales quotas were assigned by the general sales manager to the several branch exchanges. These branch quotas were broken down by the branch managers into "blocks." In this sense a "block" constituted a certain percentage of a territory, and should not be confused with a "block" of pictures for block booking. A block was assigned to each salesman at an exchange. Pictures were sold on a percentage basis or as flat rentals; in both cases, contracts were made between the exhibitor and the distributor. Sales on a percentage split necessitated daily and weekly reports on box-office receipts, with a summary on each contract. Undated product was reported to the home office weekly.

The branch manager was largely concerned with the selling activities of the exchange; in addition to supervising the salesmen, he sold films to the large accounts in the exchange territory. As the head of the exchange, he approved all exchange requisitions and reports forwarded to the home office. He reported, also, on arbitration board cases and theater changes. Branch sales control was facilitated through the use of a master control card showing the product sold each theater. With this card, a sample of which is shown in Exhibit 4, the branch manager was in a position to direct his salesforce in the solicitation of a larger share of an exhibitor's screen time.

The reorganized system of exchange operations enabled Pathe Exchange, Incorporated, to economize on branch supervision. The services of eight district managers were replaced by direct supervision from the home office. Three of the district managers were assigned to sales work of a missionary sort; five were dis-

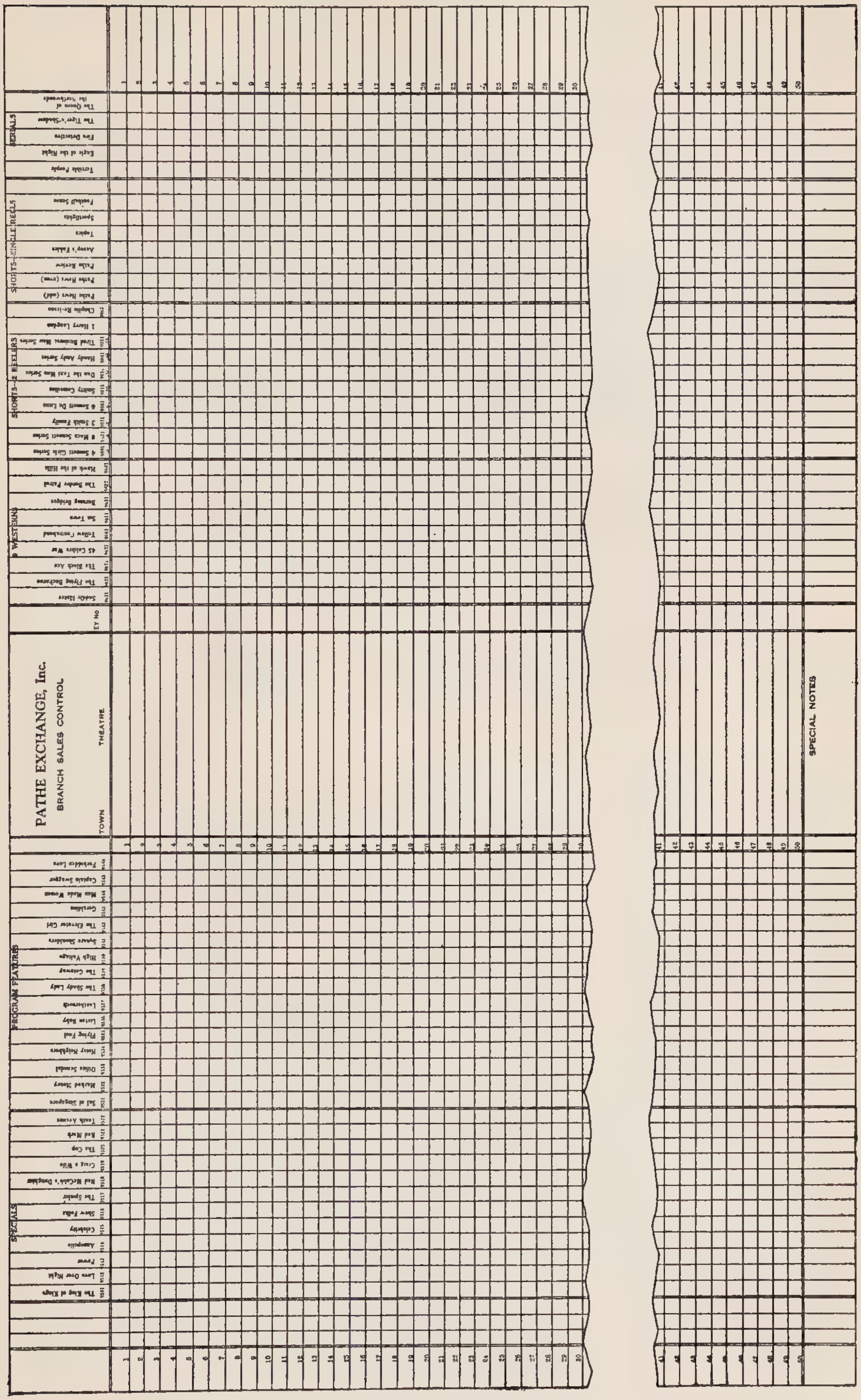


Exhibit 4: Master control card used by Pathe Exchange, Incorporated.

charged by the company. The nine exchange auditors formerly employed were replaced by three who checked the work of bookers and cashiers.

Central supervision of the exchange activities resulted in a closer control over expense; the company realized economies in exchange operation. Previously, the branch managers had approved salary increases, and, as a result, higher salaries had been placed in effect. Large savings were made in the centralized purchasing of supplies. A closer control over credit adjustments minimized the number and amount of such credits.

A closer control over sales was possible as a result of the standardized home office reports. With these reports, the central sales organization was in touch with the field and could direct activities during the sales season; inefficiency was noticeable, and corrective measures could be taken.[3]

[3] For commentary, see commentary on Pathe Exchange, Incorporated, page 371.

Pathe Exchange, Incorporated[1]

PRODUCER AND DISTRIBUTOR—MOTION PICTURES

Sales Control—*Records Adopted in Centralized Control System.* A motion picture producer and distributor decided to change from a decentralized to a centralized sales control of its branch exchanges, in order to secure a larger volume of sales and more economical operation. To assist the management in directing the activities of the exchanges, the company adopted a system of records on contracts, booking, and play dates to be kept at the central office.

(1928)

In 1928, the management of Pathe Exchange, Incorporated, a producer and distributor of motion pictures, was changed. The new management desired to secure a larger volume of sales and more economical operation in distribution. Accordingly, it decided to centralize the control of sales operations at the home office in New York City and, for that purpose, to develop a system of control.

Other distributors were known to have set up rather elaborate systems of sales control. The Universal Pictures Corporation and the Fox Film Corporation had instituted systems involving the use of Hollerith machines and control cards.

In Pathe Exchange, Incorporated, physical distribution was entirely centered in the branch exchanges, which obtained positive prints from the company's laboratories in New Jersey. The activities of an exchange, in addition to the sale of pictures, included the booking of pictures for exhibition, the inspection and repair of film prints, shipping and receiving, and billing and collection. These activities were organized into three departments: selling, under the supervision of the branch manager; booking, shipping, inspecting, and servicing, under the supervision of the booker; billing, collecting, and accounting, in charge of the cashier. The booker was virtually an office manager, while the branch manager was responsible to the main office for all exchange operations.

[1] See also Pathe Exchange, Incorporated, pages 349 and 364.

Under the old management, prior to 1928, sales control had been largely in the hands of the branch exchange managers, who were responsible to the general sales manager of the company for effective sales effort in their respective territories. A register of contracts for exhibition was maintained at sales headquarters and a follow-up was secured through traveling representatives, who checked the operations of the various exchanges about once a month. In addition to the supervision by the traveling representatives, the exchange selling activities were supervised by four division managers and eight district managers. The new management, therefore, had little information from previous sales records at the home office and was compelled to rely upon the information contained in sales records at the branch exchanges, and that furnished by the personnel of the old management.

In setting up a control system, the executives of Pathe Exchange, Incorporated, were primarily interested in the realization of sales volume; the routing of salesmen and the control of sales expense would remain largely with the branch managers, who were considered to be in a better position to supervise the visits of the salesmen. The executives desired up-to-date information, however, on contracts, bookings, and play dates that would enable them to instruct and direct the activities of the branches.

The sales in key cities were particularly important in the early season and were carefully watched because of their effect upon subsequent runs. There were estimated to be between 700 and 800 accounts in key cities, cities of more than 25,000 population, in which the initial exhibition of a feature motion picture was given, and in which a showing had an additional value to the company from the advertising of the picture. The comparative value of different theaters in a key city varied according to such factors as the location, the size, the entertainment policy, and the management. Generally speaking, the longer the period of exhibition in an important first-run theater in a key city, the greater was the value of such exhibition to Pathe Exchange, Incorporated.

Under the new system of control, a special book register was prepared for recording the contracts, bookings, rentals, and play dates in the key cities. The cities were listed by branch territories, and first-run contracts were recorded as obtained. The record for each city showed the theaters operating, the classifica-

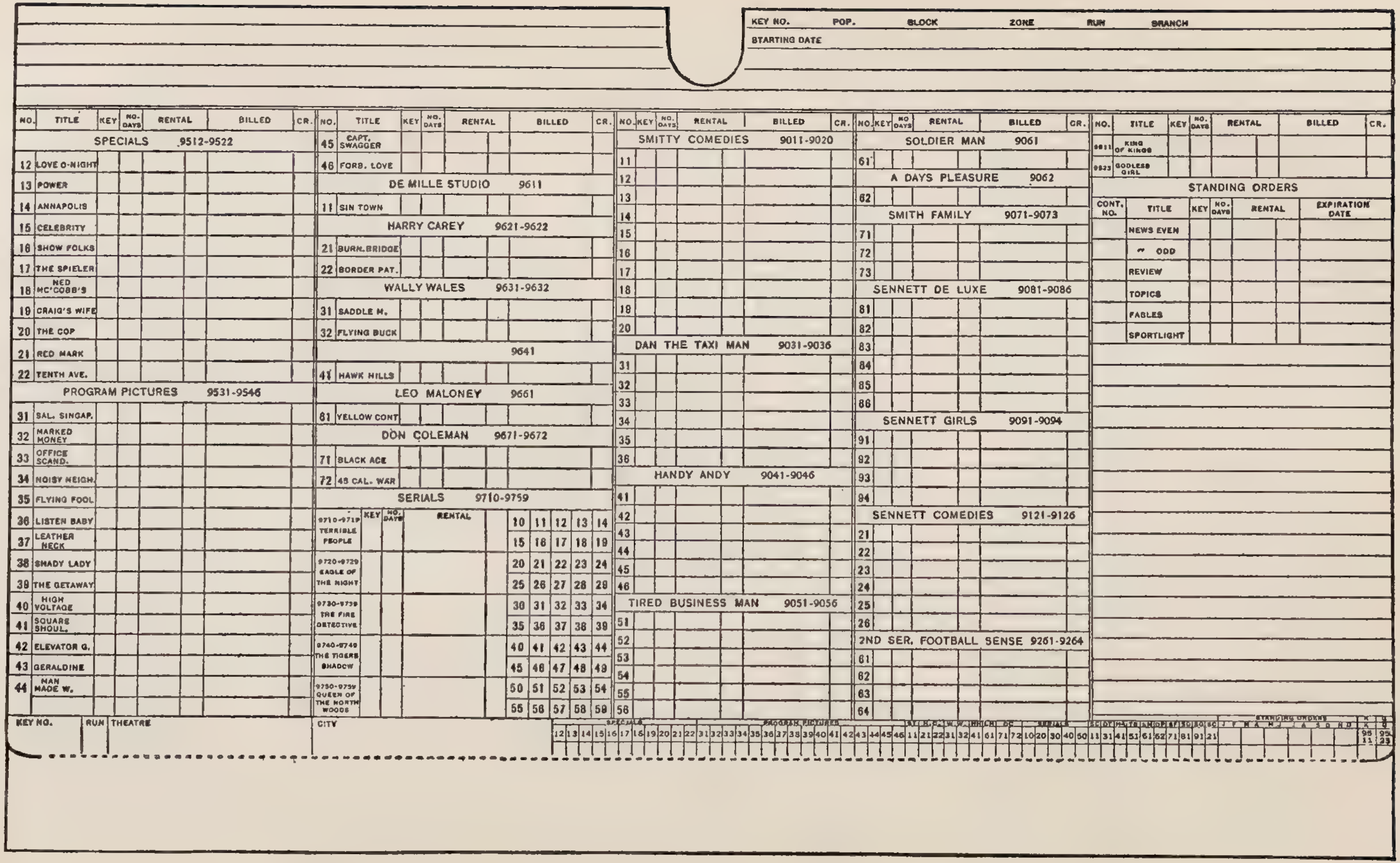
tion as to run, the seating capacity, past rentals, and other data on the competitive situation. With this record, the sales executives were enabled to direct the efforts of the division managers, branch managers, and salesmen towards the strengthening of the company's position in this important part of the market.

Potential accounts in each territory were maintained in card form. Similar records were maintained at each branch. Contracts, as approved, with data relative to rentals, runs, and playing arrangements, were posted to the card accounts as received. This record disclosed sales possibilities, thereby furnishing a basis for instructing the branch manager as to "open spots" in the territory. The card records and the special register were kept up to date by a force of clerks working under the supervision of the assistant sales manager.

The clerical force of the sales control section carried on a perpetual follow-up of the accounts as represented by the control cards. Those accounts which showed an apparent falling-off of sales were removed from the index file and referred to the assistant sales manager for attention. The assistant sales manager then requested the branch exchange managers to report on the reasons why the accounts were unsold. Familiarity with the status of the accounts on the part of the control clerk was necessary in order that an effective follow-up might be secured. Information received from the branches relative to the query of the assistant sales manager was noted on the control cards.

In another division another control card was utilized for the follow-up on play dates. This card, shown in Exhibit 1, was prepared and used as a visible index to the sale and exhibition of all pictures produced. One card was kept for each account, and it was possible by a glance at a card to know those pictures which had not been sold to the account, those which had been sold but unplayed, and those which had been sold and played. Postings were made from a copy of the contract, the reports of bookers, and the notices of confirmed play dates. A diagonal line through the special column provided for each picture on the visible portion of the card indicated a contract for the picture, and a second cross-diagonal line indicated a play date obtained. Cancellations were posted in red.

A follow-up of accounts sold with pictures unplayed was made in a manner similar to the follow-up of sales. Exchange bookers



KEY NO. POP. BLOCK ZONE RUN BRANCH
STARTING DATE

NO.	TITLE	KEY	NO. DAYS	RENTAL	BILLED	CR.
	SPECIALS			9512-9522		
12	LOVE O-NIGHT					
13	POWER					
14	ANNAPOLIS					
15	CELEBRITY					
16	SHOW FOLKS					
17	THE SPIELER					
18	NED MC'COBB'S					
19	CRAIG'S WIFE					
20	THE COP					
21	RED MARK					
22	TENTH AVE.					
	PROGRAM PICTURES			9531-9546		
31	SAL. SINGAP.					
32	MARKED MONEY					
33	OFFICE SCAND.					
34	NOISY NEIGH.					
35	FLYING FOOL					
36	LISTEN BABY					
37	LEATHER NECK					
38	SHADY LADY					
39	THE GETAWAY					
40	HIGH VOLTAGE					
41	SQUARE SHOUL.					
42	ELEVATOR G.					
43	GERALDINE					
44	MAN MADE W.					

NO.	TITLE	KEY	NO. DAYS	RENTAL	BILLED	CR.
45	CAPT. SWAGGER					
46	FORB. LOVE					
	DE MILLE STUDIO			9611		
11	SIN TOWN					
	HARRY CAREY			9621-9622		
21	BURN. BRIDGE					
22	BORDER PAT.					
	WALLY WALES			9631-9632		
31	SADDLE M.					
32	FLYING BUCK					
				9641		
41	HAWK HILLS					
	LEO MALONEY			9661		
61	YELLOW CONT.					
	DON COLEMAN			9671-9672		
71	BLACK ACE					
72	45 CAL. WAR					
	SERIALS			9710-9759		

	KEY	NO. DAYS	RENTAL					
9710-9719 TERRIBLE PEOPLE				10	11	12	13	14
				15	16	17	18	19
9720-9729 EAGLE OF THE NIGHT				20	21	22	23	24
				25	26	27	28	29
9730-9739 THE FIRE DETECTIVE				30	31	32	33	34
				35	36	37	38	39
9740-9749 THE TIGERS SHADOW				40	41	42	43	44
				45	46	47	48	49
9750-9759 QUEEN OF THE NORTH WOODS				50	51	52	53	54
				55	56	57	58	59

NO.	KEY	NO. DAYS	RENTAL	BILLED	CR.
	SMITTY COMEDIES			9011-9020	
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
	DAN THE TAXI MAN			9031-9036	
31					
32					
33					
34					
35					
36					
	HANDY ANDY			9041-9046	
41					
42					
43					
44					
45					
46					
	TIRED BUSINESS MAN			9051-9056	
51					
52					
53					
54					
55					
56					

NO.	KEY	NO. DAYS	RENTAL	BILLED	CR.
	SOLDIER MAN			9061	
61					
	A DAYS PLEASURE			9062	
62					
	SMITH FAMILY			9071-9073	
71					
72					
73					
	SENNETT DE LUXE			9081-9086	
81					
82					
83					
84					
85					
86					
	SENNETT GIRLS			9091-9094	
91					
92					
93					
94					
	SENNETT COMEDIES			9121-9126	
21					
22					
23					
24					
25					
26					
	2ND SER. FOOTBALL SENSE			9261-9264	
61					
62					
63					
64					

NO.	TITLE	KEY	NO. DAYS	RENTAL	BILLED	CR.
9811	KING OF KINGS					
9823	GODLESS GIRL					

STANDING ORDERS

CONT. NO.	TITLE	KEY	NO. DAYS	RENTAL	EXPIRATION DATE
	NEWS EVEN				
	" ODD				
	REVIEW				
	TOPICS				
	FABLES				
	SPORTLIGHT				

KEY NO. RUN THEATRE CITY

SPECIALS PROGRAM PICTURES SERIALS STANDING ORDERS

12 13 14 15 16 17 18 19 20 21 22 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 11 21 22 31 32 41 61 71 72 10 20 30 40 50 11 31 41 51 61 62 71 81 91 21 95 11 95 23

Exhibit 1: Control card for play dates, used by Pathe Exchange, Incorporated.

were instructed to secure datings for unplayed contracts or to explain the delay on the part of the exhibitor. As a result of the follow-up, applications and confirmations of play dates were received from the bookers. Explanations of failure to receive play dates were noted on the control card. Each month a thorough check of the unplayed accounts was made and an informal report was made to the manager of exchange operations on the situation in each exchange and on each class of product or particular picture. This information was turned over to the exchange auditors who visited the bookers at the several branch exchanges.

For control purposes, statistical information was taken from contracts and branch reports, was punched on Hollerith cards, and tabulated weekly. The volume of sales for a week ending Friday was available to the executives on the Monday following; two or three days later the cumulative sales records with gross sales, cancellations, and net sales for each picture were ready. Billings and unplayed contract figures for the country were prepared weekly, with a monthly analysis by branch and by picture. Sales expense figures were accumulated from the salesman's reports and branch exchange managers' summaries.

While the above-described system of control depended, in a large measure, upon the familiarity of the clerical force with the exchange accounts, it afforded an economical means of maintaining close contact with sales operations. Consideration had been given to the possibility of combining the sales and play date control in a single section with a single index. Because of the variety of product and the large number of pictures, considerable time in posting would be required, thereby restricting the time in which the records would be available to the executives. The company decided that both control records were necessary.[2]

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[2] For commentary, see commentary on Pathe Exchange, Incorporated, page 371.

Pathe Exchange, Incorporated[1]

PRODUCER AND DISTRIBUTOR—MOTION PICTURES

Sales Organization—*Reorganization of Product and Territorial Sales Functions.* A producer and distributor of motion pictures wished to strengthen its sales organization, which had recently been changed from a decentralized organization to a highly centralized home office control of exchange operations. A reorganization of the sales department was effected, in which the division of responsibility between product and territorial managers was eliminated by discontinuing the position of product managers, and the exchanges were regrouped into four territorial districts in accordance with the amount of supervision required by each. (1929)

Pathe Exchange, Incorporated, a producer and distributor of motion pictures for domestic and foreign exhibition, wished to strengthen its sales organization. In May, 1929, therefore, the executives of the company considered a proposed reorganization of the sales department.

Pathe Exchange, Incorporated, operated a national exchange system with exchanges in 31 key cities of the United States. Foreign distribution was carried on by subsidiaries of the company, except in Canada, where Regal Films, Limited, distributed Pathe pictures. The offices of the sales department were located at the executive headquarters in New York City.

In addition to its own product, the company distributed films of other producing companies on a percentage arrangement, usually receiving 30% to 40% of the gross revenue. The company was also the largest American distributor of films of educational value to the nontheatrical market. The company's gross sales, in 1928, were approximately $18,000,000.

The Pathe product was sold in groups of pictures of varying numbers, depending upon the requirements of the exhibitors and the sales ability of the salesmen. Feature pictures were offered as a single group consisting of an entire season's output; the company endeavored, by all fair and reasonable inducements,

[1] See also Pathe Exchange, Incorporated, pages 349 and 359.

to persuade exhibitors to contract for the entire number in the group. The company never refused to sell an exhibitor less than an entire group of films; it did not permit an exhibitor, however, to make his choice of one or more of the pictures offered in a group at a group average price. The product of one outside producer was not commingled with that of another outside producer or with that of Pathe Exchange, Incorporated, but was sold independently as individual pictures or as groups of a given series. In the case of Pathe News, 104 issues, divided into 2 series, comprised the output for a year.

The price at which such pictures, except certain short subjects, were offered was established by the adoption of a national quota for each picture, which was in turn broken up into percentages assigned to each branch exchange, and further broken up into percentages thereof assigned to each sales district within the territory covered by a branch exchange. From the quota figures, and the sales manager's, the branch manager's, and the salesman's knowledge of prices which had been paid and had thereby become more or less established for given theaters for the different classes of product, the rentals to be derived from the several theaters in a territory and zone were determined. Such prices necessarily remained flexible because, in the final analysis, the price at which a group of pictures was sold was determined as a result of negotiations between the salesman and the exhibitor in arriving at an average price acceptable for the entire number of pictures taken. Large first-run theaters did not, generally speaking, take pictures in groups. It was the salesman's responsibility to sell as much of the company's product to as many exhibitors as possible at the best prices he could obtain. The company's records showed a great variance between the number of contracts taken on the various pictures comprising a group. For example, a popular picture in one group had received approximately 10,000 contracts, whereas a less popular picture had netted only 3,000 contracts.

Pathe Exchange, Incorporated, maintained a force of about 130 salesmen during the selling season, the number of salesmen decreasing somewhat during the year. Each salesman, except those selling nontheatrical pictures, sold the entire line of product in the block assigned to him in a branch territory on a straight salary and expense basis. Previous to 1928, salesmen had specialized in the sale of features and in the sale of short subjects,

comedies, and newsreels in certain territories. Of the 15,000 or so theaters considered as potential accounts, satisfactory distribution commonly constituted from 6,000 to 8,000 contracts on an individual picture. In presenting the company's product, the salesmen placed short subjects first, because Pathe Exchange, Incorporated, was recognized as the leader in this field and because the widely diversified output of these pictures made them adaptable for sale to nearly every theater in the country. After an agreement was reached on the short subject product, other groups were presented in turn. It was the policy of the company to sell an entire program of available product wherever possible. Sales of the several classes of product during the 1928–1929 season, in relation to total sales were as follows.[2]

Superspecials	16.3% of total sales	
Programs and Specials	34.0	
Westerns	1.5	
Total Features		51.8%
Serials	3.0%	
Comedies	10.2	
Newsreels	20.4	
Other Short Subjects	14.6	
Total Short Subjects		48.2%
Total Sales		100.0%

The company's advertising activities included the advertising and exploitation of individual pictures and the general advertising and publicity of the company. The work was divided into such departments as: Advertising—paid space, outdoor advertising, exhibitor helps, and advertising on theater screens; Publicity—news stories and other forms of free publicity; and Exploitation—stunts, contests, cooperation of merchants, and tieups with music distributors. It was the policy of the company to popularize the individual pictures and stars rather than the trade-mark of the company. The company employed an advertising agency.

Physical distribution was largely centered in the branch exchanges, which obtained positive prints from the company's laboratories in New Jersey. The activities of an exchange, in addition to the sale of pictures, included the booking of pictures for exhibition, the inspection and repair of film prints, shipping and receiving, and billing and collection. Each exchange manager, although in direct charge of all the activities of his exchange,

[2] Actual figures have been altered.

functioned principally in the capacity of sales manager. Unless an exchange was large enough to require the services of an office manager, the booker assumed control of all nonselling duties.[3]

Prior to April, 1928, the domestic sales territory was in four divisions: eastern, central, western, and southern, with a resident sales manager for each division. In addition to the 31 branch exchange managers, 8 district managers supervised the selling activities of the exchanges. In April, 1928, the eastern and southern division managers were discontinued; the home office assumed supervision of the eastern division, while the central division assumed supervision of the southern territory. The district organization was abandoned, the work being taken over by four traveling representatives of the home office. The number of traveling exchange auditors was reduced from nine to three. Three divisions of the advertising department—advertising, publicity, and exploitation—were consolidated under one head.

Thus, changes in the control of exchange operations were made by which a previously decentralized organization of operations was supplanted by a highly centralized home office control through functional instructions and reports. As a result of the changes, the company was enabled to secure a closer control over exchange activities and to realize economies in operation. At the same time, the sales department was reorganized. The department, as reorganized in April, 1928, and in effect in May, 1929, is shown in Exhibit 1.

Under the organization in effect in May, 1929, the work of the department was divided along three lines: function, product, and territory.

As functional assistants, the general sales manager had a director of advertising, a manager of exchange operations, and an assistant sales manager. The advertising director maintained contact with the exchanges through the manager of exchange operations; local advertising, including exhibitors' helps, posters, and other advertising accessories, was a minor part of the advertising work. The manager of exchange operations had direct control of the nonselling activities of the exchanges.[4] In financial matters affecting exchange operations, he cooperated with the comptroller and the treasurer. The assistant sales manager

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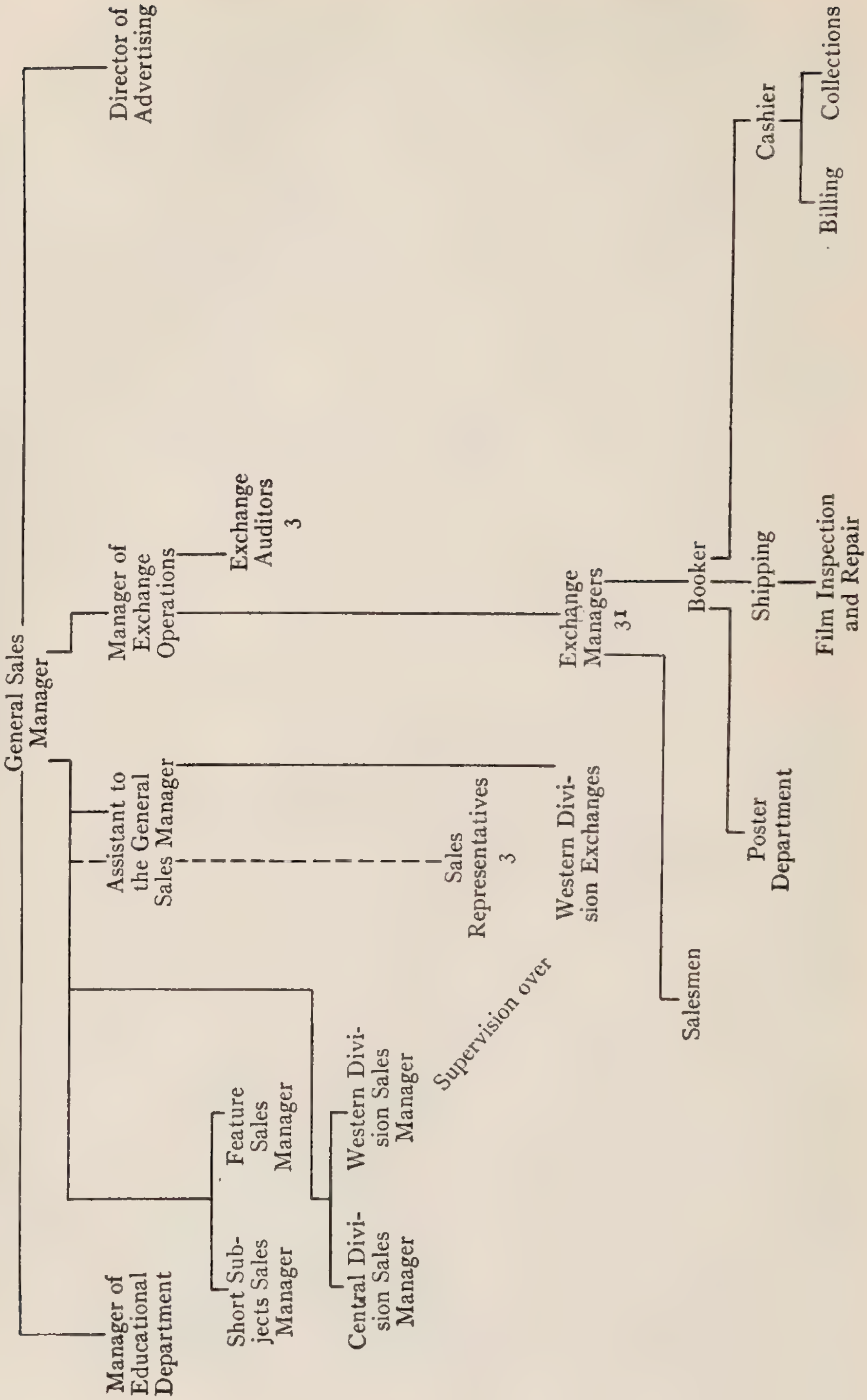
[3] See Pathe Exchange, Incorporated, page 349.
[4] See Pathe Exchange, Incorporated, page 359.

Exhibit 1

Organization of Sales Department of Pathe Exchange, Incorporated, in Effect May, 1929



exercised control over the routine selling activities, including the analysis of contract applications, and was available for field work.

The product division of the sales organization consisted of the educational department and the short subjects and feature sales managers. The educational department, while under the supervision of the general sales manager, was somewhat detached from the organization because the bulk of its sales were made by special salesmen and by correspondence. Educational films, while largely sold to nontheatrical accounts, were considered a part of the company's regular line, and were available for theatrical exhibition. Specialized sales managers, situated at the New York office, were responsible for sales promotion, sales, and bookings of the two major classes of product, features (including special, program, and western pictures) and short subjects (including comedies, short films, newsreels, and educational pictures). Their relations with the branch managers were through the assistant sales manager.

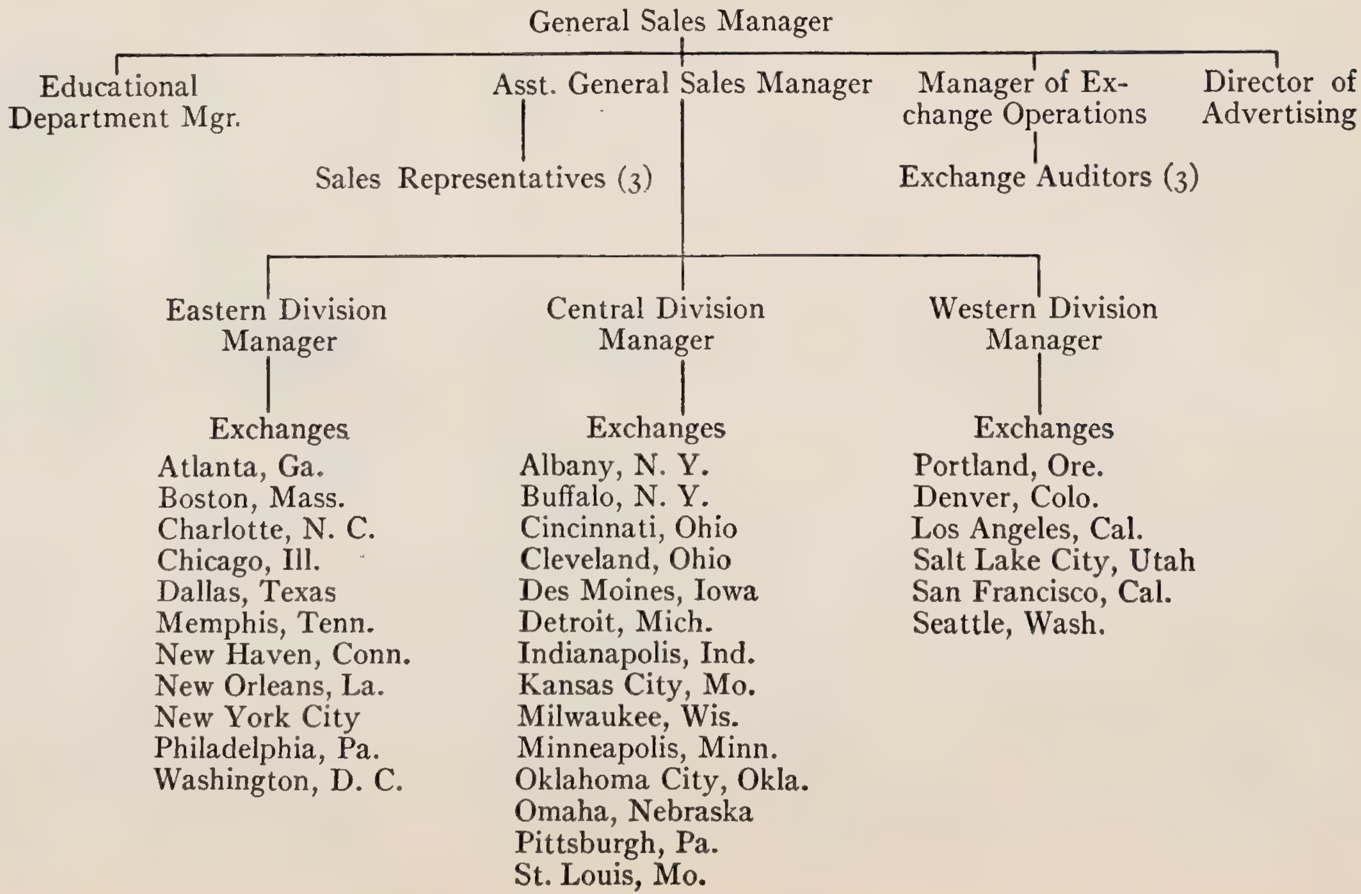
The territorial division of the sales department comprised the central and western division managers, who were largely concerned with selling to the large accounts in their territories. The number of theater chains and circuits in which purchasing of films was concentrated in one office made it practicable to utilize the division managers as salesmen. The division manager in the western territory also exercised supervision over the branch exchanges in his territory because of the distance of these exchanges from the New York office.

Three sales representatives spent their entire time in the field assisting the branch managers and the salesmen in closing accounts and in the promotion of sales. Three exchange auditors visited the several exchanges for the purpose of checking the activities of the bookers and cashiers. The auditors were responsible to the manager of exchange operations. The branch exchange managers were responsible to the home office for all distributing activities in their territories.

Because the company recognized certain deficiencies in the organization of the sales department as of May, 1929, a second plan of reorganization was proposed. Under this proposed plan, the division of work between short subjects and features would be discontinued. The work would be divided into three territorial divisions, eastern, central, and western, with a reallocation of

EXHIBIT 2

PROPOSED PLAN OF REORGANIZATION OF SALES DEPARTMENT OF PATHE EXCHANGE, INCORPORATED



exchanges in the divisions. The new divisional managers with offices at headquarters would be responsible for all selling activities in their respective territories. The proposed plan is shown in Exhibit 2.

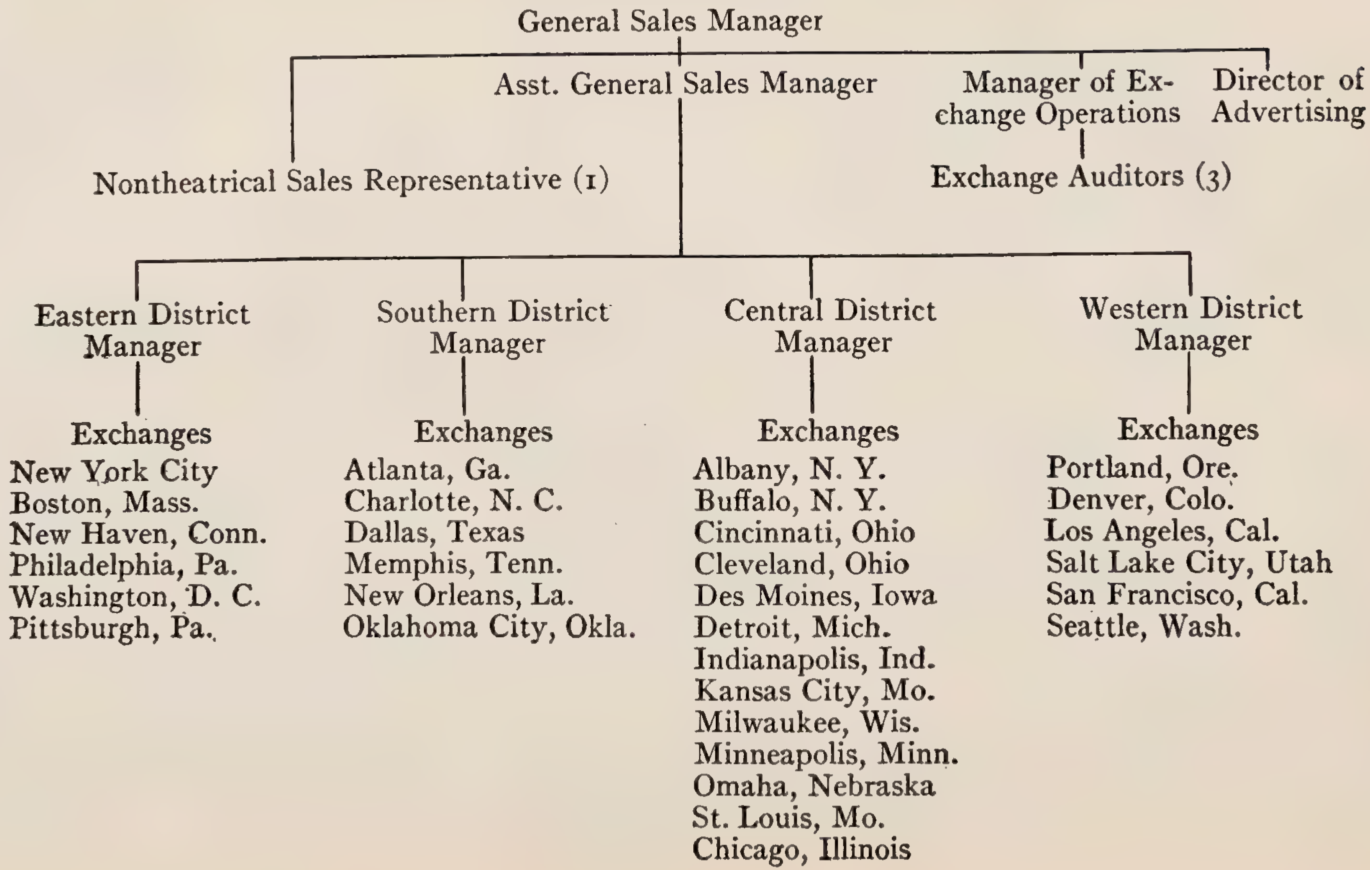
The main reason advanced for this reorganization was to secure economy of operation. It was believed that a concentration of sales control in the district managers rather than a division of control between product and district managers would enable the distributing activities to be carried on with a reduction in managerial personnel. Furthermore, the division of responsibility between territorial and product managers was believed to have resulted in ineffective control of sales. Concentration of sales control was believed possible in 1929, because of two recent changes in distributing conditions. The centralization of branch control at the New York office had enabled the company's sales executives to become familiar with the exchange operations to a greater degree than theretofore. With this knowledge of conditions in the exchange territories the company had replaced inefficient branch managers with others more competent, and thus had gradually reduced the amount of central supervision necessary. Secondly, the trend toward the development of producer- and distributor-controlled theaters had consolidated the market. It was possible in 1929 to secure from a small number of companies a large number of bookings for exhibition. This situation had increased the importance of the main distributing offices and decreased the selling activities of the exchanges.

The proposed plan of organization was adopted only in part. Further consideration of the supervision required in branch operations caused the company to regroup the exchanges in accordance with the listing in Exhibit 3. Each exchange was to be in the charge of an exchange manager, who would be directly responsible to his division manager.

Commentary: This case illustrates the marked tendency toward centralization of control in motion picture companies operating a national system of exchanges. The experience of this company is conclusive that the earlier decentralized organization was not productive of satisfactory results. Specifically that type of organization was objectionable because of the lack of definiteness with which responsibility was placed. The evidence on this point is reasonably clear from the case itself.

Exhibit 3

Adopted Plan of Reorganization of Sales Department of Pathe Exchange, Incorporated



The segregation of product as between short subjects and feature products and educational pictures was doubtless sound so far as educational pictures were concerned. Such pictures were substantially different in character from the rest of the company's product and were sold largely to a different type of market. There was not the same justification for segregating short subjects and features. Both these types of pictures were sold primarily because of their entertainment value. Both were sold to theaters and both were sold to the same theaters. The expense incidental to the maintenance of two groups of salesmen, augmented by the possibility of irritation on the part of the exhibitors upon being visited by two representatives of the same company, could not be offset by the possible increase in volume. Several other companies have at one time or another followed the policy thus outlined. In common with Pathe Exchange, Incorporated, all have abandoned it.

The strategy of having the salesmen emphasize short subjects before calling attention to the company's feature pictures is interesting. It can be justified only on the ground that short subjects are more important than are the features, or that they are better known to the exhibitors. The first argument can scarcely be seriously urged, since short subjects are practically always incidental parts of a program in the minds of exhibitors. That Pathe short subjects were better known than its feature pictures may have been true. Since, however, Pathe Exchange, Incorporated, was undertaking to offer a complete program, and since feature pictures provide the basis of any program, the strategy of attempting to sell the incidental product first was questionable. Only in the event that the distributor considered the short product as of greater importance to himself, would such a course appear wise.

The proposed plan of reorganization (Exhibit 2) remedies many of the difficulties in the organization as depicted in Exhibit 1. The reallocation of exchanges presents some apparent inconsistencies. It is not clear why the eastern division manager should have supervision over Dallas and New Orleans as well as Boston and New York, while the central division manager was responsibie for Albany and Oklahoma City. The organization finally adopted corrects these anomalous situations in the main. The form of organization finally adopted has distinct merits over either of the other two. The lines of authority are substantially clearer than in either of the other cases. The territorial limitation of each district is more consistent. Segregation of the nontheatrical department from the theatrical department is wisely retained. The centralization was justified because of the increasing importance of distributor-controlled theaters and of the tendency for centralized buying to supplant a larger number of individual purchases.

The independence of the director of advertising from the supervision of the assistant general sales manager may be noted. Many executives believe that advertising is merely one form of selling, and as such should be under the supervision of the same executive who is responsible for the other forms of sales promotional work. In the interests of greater correlation and consequent effectiveness it is believed that this point of view is essentially sound. There is substantially more reason for segregating a manager of exchange operations who is responsible for physical distribution, although the reason for placing the exchange auditors under the supervision of the manager of exchange operations is by no means clear. In general, it would appear that the function of an auditor is that of providing an independent check of accounts in the interest of insuring both accuracy and honesty. The superior officer over such an auditor ought not to be the same individual as the one whose accounts are being checked. It would have been better, therefore, in the present case to place the auditors immediately under the direction of the comptroller of the company.

November, 1929 H. T. L.

Film Boards of Trade

TRADE ASSOCIATIONS—MOTION PICTURES

Restraint of Trade—*Credit Rules Alleged to be Unreasonable.* An action under the Sherman Anti-trust Act was brought in the District Court of the United States for the Southern District of New York against a group of motion picture producers and distributors. The petition charged the defendant with engaging in a conspiracy in restraint of trade by means of the adoption of rules and regulations for the establishment and operation of a credit committee by each defendant Film Board of Trade.

(1929)

In March, 1929, Motion Picture Producers and Distributors of America, Incorporated, and 32 Film Boards of Trade were named as defendants in an action brought under the provisions of the Sherman Anti-trust Act.[1] The petition charged the defendants with engaging in a conspiracy in restraint of trade by means of the adoption of rules and regulations for the establishment and operation of a credit committee by each defendant Film Board of Trade. An important consideration, irrespective of the legal questions involved, was the extent to which the existing credit committees were essential and adequate as a matter of policy in the distribution of motion pictures. It was the contention of the defendants that some form of credit organization was essential, and that the plan in use was reasonably adapted to the requirements of the industry.

A film board of trade was an unincorporated association organized and maintained by distributors, with a membership composed principally of the exchange managers of these distributors in a particular territory. The 10 distributing companies which comprised the membership of the Motion Picture Producers and Distributors of America, Incorporated, supplied approximately 60% of the films distributed annually in the United States, while

[1] Petition in *United States of America* v. *First National Pictures, Incorporated, et al.*, defendants in the District Court of the United States for the Southern District of New York.

members of each film board controlled practically all films distributed in the territory. Thus, it was impossible for any exhibitor to secure sufficient films for the regular operation of a theater without dealing with one of the large distributors.

The distribution of motion pictures comprehended the preparation of an advance announcement of a program for the distribution period of one year beginning in September, the sale of licenses to exhibit pictures, the arrangement of definite dates for exhibition, and the delivery of the positive prints by each branch exchange to the exhibitors in the territory it served.

Transactions between distributors and exhibitors were accomplished by means of a written contract known as the Standard Exhibition Contract. Although each contract for the exhibition of motion pictures required payment before shipment for each picture, if payment was not made before shipment the picture usually was sent C.O.D. In the case of large contracts with chains of theaters, it was a common practice in the industry to obtain a series of monthly payments equal to the total annual rental for the pictures included in the contract. A contract, which was usually for a group of pictures varying in number from 6 to 60, generally was negotiated and concluded prior to the production of many of the pictures included, and in any event before they were released. When an exhibitor required a single picture for a date in the immediate future for which no contracted picture was available, "spot booking" under an individual contract was necessary.

Motion pictures were sold by the season, which corresponded to the theatrical year, and many exhibitors bought in advance for an entire year. If an exhibitor refused to take a picture for which he had contracted, when it was available to him for exhibition, the distributor often was unable to sell the picture to a competing theater because the latter's available time was already contracted for. A sale with a late dating resulted in a smaller rental than was secured for an early booking, as pictures were most valuable when first released. The maximum earnings from a picture could be secured, therefore, at those times of the year when exhibitors had open dates for exhibition.

Each year several thousands of the motion picture theaters in the United States were sold or transferred ownership one or more times. The number of transfers and the amounts involved in

uncompleted contracts during 1926, 1927, and 1928 were as follows:[2]

Year	Number of Transfers	Aggregate Amounts of Uncompleted Contracts	Distributors' Losses on Uncompleted Contracts
1926.	3,438		
1927.	3,950	$7,297,374.13	$2,111,547.88
1928.	4,612	9,843,970.23	4,045,857.53

The distributors had sought to ascertain whether such changes of ownership were for the purpose of avoiding outstanding uncompleted contracts made with former owners, and to secure information concerning the new owners who would be doing business with them. In January, 1926, therefore, the distributors had prepared, and caused each film board of trade to adopt, rules and regulations for the establishment and operation of credit committees.

The purpose of the credit rules as stated in Rule I was "To correct abuses and unfair practices which now prevail in the motion picture industry arising out of changes of ownership of theaters for the purpose of avoiding uncompleted contracts."

The president of each film board of trade appointed, with the advice and consent of the members, three members, each of whom was a branch manager of a distributor, to serve on the credit committee for a period of three months. The function of the credit committee was to investigate and report to the members the names of all persons who had acquired by purchase or transfer theaters located in the territory within which the film board of trade operated. The secretary of the film board of trade was secretary of the credit committee. Members were required to report promptly to the secretary all sales or transfers of theaters which came to their attention. The secretary made a list of these theaters, called the "Credit Information List," a copy of which was furnished to the members for their confidential information. Each member sent the secretary a statement of his existing contracts for the exhibition of pictures at each theater on the list, and information as to whether the contracts had been assumed by the new owners. A new owner was requested to furnish the credit committee within five days information and references to enable

[2] Defendants' Brief, page 16.

the committee to report to the members on his credit standing. This information was secured by means of a questionnaire. After an examination by the credit committee, the credit standing was reported to the members. Following is the questionnaire used by the credit committee.

Credit Committee Questionnaire

Please answer each question, sign and return to—

Credit Committee

......................Film Board of Trade

Address.........................

1. Name of Theater..
2. Street Address......................City and State....................
   Population of City..................Seating Capacity..................
   Policy: Pictures ( ) Vaudeville ( ) Roadshows ( )
   Number of days open each week.............Time of first performance ........................A.M..................P.M..................
   What days do you have matinees............................Time of first performance...
   Telephone No. of Office.................of Residence...................
   Name of person, firm or corporation operating theater.....................
   If a corporation, give corporate name.....................................
   Name of President..
   Name of Treasurer..
   Name of Secretary..
   Name of General Manager..
   Is stock of Corporation or a substantial amount thereof owned or held by another Corporation..
   If so, give name of Corporation and names of officers and directors.........
   ....
   If Partnership, give names of partners....................................
   ....
   ....
   Who is authorized to enter into and sign contracts........................
   ....
3. How will the contracts be signed..
4. Is theater owned or leased.................If leased, state expiration date of lease...
5. Name of lessor.....................................If owned, state name of owner..
   ....
6. On what date was theater taken over..
7. Place where and date of recording bill of sale..............................
   ....
8. Admission prices..
9. Condition of projection machines..
10. Have you or your operator inspected them? If not, do you agree to have them inspected within thirty days.......................................
    ....
11. Model of machines...............................Year.....................
    ....
12. Name theaters heretofore conducted, stating location of each...............
    ....
    ....
    ....

13. If you have never been engaged in the exhibition of pictures, state previous business..
....
14. Bank references...
15. Other references..
16. Specify contracts for film service made by previous owner:

Name of Distributor	Date of Contract	No. Pictures Unplayed
....	....	....
....	....	....
....	....	....
....	....	....
....	....	....

17. Specify contracts you have assumed...
....
18. If you have not assumed the previous owner's contracts, will you assume them?

(If your answer to this question is "yes" fill out and sign the attached agreement of assumption.)

The undersigned represents and warrants that the answers to the foregoing questions are true and are made to induce the members of the above named Film Board of Trade to contract with the undersigned owner or lessee for the exhibition of motion pictures at the above named theater.

Signature....................
Owner
Lessee (Strike out one)

Date:...........19

Assumption of Contracts

...............19......

Know All Men by These Presents, that the undersigned.......................
owner
........................lessee of the...
Theater, in consideration of One Dollar lawful money of the United States in hand paid, the receipt of which is hereby acknowledged, and other valuable considerations hereby agrees to assume, carry out and fully perform each of the contracts now existing between...and

(Name of previous owner)

the following Distributors:

....
....
....
....
....

for the exhibition of pictures at said theater from the above date.

Distributors	Date of Contract	No. pictures unplayed	Class (features, comedies, news, other shorts)
....	....	....	....
....	....	....	....
....	....	....	....
....	....	....	....
....	....	....	....

....
(New lessee New owner) (Strike out one)
....Theater
Address...................................

STATEMENT OF FINANCIAL CONDITION

Statement of..

Individual Corporation Partnership (strike out one)

Operating..................Theater

To: CREDIT COMMITTEE OF THE FILM BOARD OF TRADE.

For the purpose of inducing members of the Film Board of Trade to contract with the undersigned owner (or lessee) for the exhibition of motion pictures at the ....Theater, I (or we) warrant and represent that the following is a true and correct statement of my (or our) financial condition on the.......... day of............19...., and agree that in case any change occurs that materially reduces my (or our) ability to pay all claims and demands against me (or us) or materially increases my (or our) liabilities or decreases my (or our) assets, I (or we) will forthwith notify you in writing to such effect.

Assets		Liabilities	
Cash on hand and in Bank		Notes Payable.............	
Notes Receivable...........		Money Borrowed..........	
Real Estate (How Valued)		Accounts Payable..........	
Furniture and Fixtures......		Mortgages—Real Estate....	
Screen, Machines, Chairs....		Chattel Trusts............	
All other assets consisting of:		Mortgages on Personalty and Fixtures............	
....		All other liabilities consisting of:	
....		....	
....		....	
Total....................		Total..................	

Net worth as of this date $...............

....

Exhibitor

If the new owner of a theater refused or failed to furnish the information requested, the credit committee reported the theater by the words "Credit Information Refused" or by the initials "CIR." If the committee concluded that the transfer of ownership had been for the purpose of avoiding existing contracts, the theater was reported as "Transferred or Sold to Avoid Existing Contracts," or "Fraudulent Transfer," by the initials "FT."

When theaters were listed as "CIR" or "FT" accounts, cash deposits were required as security for the performance of subsequent contracts. Cash security requirements did not apply where the new owner had assumed the contracts of the previous owner. Upon satisfactory evidence of the credit standing of any new owner, the name was removed from the credit information list by the committee, and the members of the film board of trade were free to contract for the exhibition of pictures at such theater without cash security requirements.

Exhibit 1

Statement Showing for 1927, Number of (1) Theaters, (2) Transfers of Ownership, (3) Purchasers Refusing to Assume Any Part of Contracts, (4) Purchasers Assuming All or Part of Contracts and (5) Amounts Involved*

Film Board	Number of Theaters	Number of Transfers	Number of Purchasers Refusing to Assume Any Part of Contracts and Amount Involved		Number of Purchasers Assuming All or Part of Contracts and Amount Involved	
			Number	Amount	Number	Amount
Albany	450	48	21	$ 16,141.00	27	$ 35,750.75
Atlanta	773	102	43	62,185.75	59	91,678.00
Boston	1,165	42	12	36,204.50	30	147,213.65
Buffalo	533	71	34	92,294.95	37	138,700.21
Butte	181	28	6	7,176.75	18	15,843.70
Charlotte	506	110	65	52,756.00	42	51,878.48
Chicago	1,200	184	58	242,571.42	121	331,072.10
Cincinnati	1,700	189	38	128,830.59	151	134,757.84
Cleveland	700	121	54	175,812.32	63	276,681.28
Dallas	1,100	219	85	122,317.91	124	203,357.46
Denver	400	86	19	31,462.10	58	91,859.50
Des Moines	600	150	12	2,645.00	138	100,301.35
Detroit	656	130	15	58,349.70	115	515,481.32
Indianapolis	1,063	107	36	96,068.10	71	224,035.70
Kansas City	875	285	109	113,298.27	176	223,128.29
Los Angeles	475	79	12	43,246.25	67	177,937.75
Milwaukee	612	81	31	43,837.43	50	120,693.02
Minneapolis	No Records Available					
Memphis	657	104	57	41,628.64	34	52,801.75
New Haven	225	50	10	60,631.70	40	219,648.35
New Orleans	375	85	61	64,565.62	11	33,316.50
New York	1,276	190	38	77,120.04	152	418,498.49
Oklahoma City	647	99	38	111,351.27	61	111,053.25
Omaha†	530	689	111	29,346.22	379	85,278.06
Philadelphia	825	153	23	38,229.00	121	554,683.00
Pittsburgh	903	125	81	84,596.55	44	188,099.18
Portland	257	55	23	No Record	17	No Record
St. Louis	1,358	114	27	72,820.05	83	205,530.50
Salt Lake City	535	48	7	11,479.60	41	102,346.25
San Francisco	525	88	61	34,253.00	27	121,529.25
Seattle	431	54	27	85,552.85	27	88,408.99
Washington	600	64	23	74,775.30	41	124,262.28
	22,133	3,950	1,237	$2,111,547.88	2,425	$5,185,826.25

* Defendants' Brief.

† Cases where there were no contracts to assume, 199.

Any member of a film board of trade who violated any of the rules and regulations with respect to the establishment and operation of the credit committee was subject either to suspension for a

definite period or to expulsion, according to the decision at his hearing before members of the board.

In substantiation of the need for credit facilities, the distributors prepared and submitted the statement reproduced on page 381 as Exhibit 1.

Mr. Douglas, Secretary of the Dallas Film Board of Trade, at the trial of the case described the condition in his territory prior to the adoption of the credit rules:

> Prior to the formation of the Credit Committee and the credit rules, one of the ways, in a great many cases, in which the distributor heard about a transfer, was the rejection of the film when it was sent out to the country . . . each distributor just relied on the information the best way he could get it . . . Distributors thought the best thing to do was to recognize and respect the alleged purchaser and try to make another deal with him and try to salvage something out of his contract.[3]

Regarding the effect of the credit rules, the testimony of the board secretaries was very definite. Overbuying, fake closings, refused shipments, fraudulent transfers, periodical sales of theaters, lack of respect for contracts, and "bicycling" on the part of certain exhibitors were cited as practices which had diminished as a result of the operation of credit committees. "Bicycling" is a term applied to the exhibition of a film in a theater or theaters for which an exhibitor has made no contract and for which he has paid nothing. The application of the term grew out of the practice of carrying films by bicycle from one theater to another. The secretary of a film board stated that fraudulent transfers had been minimized, contracts had been respected, and exhibitors had become more prudent business men since the creation of the credit committees. He further stated that in only 5 out of 100 instances in which purchasers assumed part of contracts could legal action be instituted with hope of collection on the remainder from the defaulting former owners.

In explanation of the credit rules, it was stated by the secretaries that the value of films entrusted to an exhibitor's care and subject to abuses, including damaged prints and bicycling, had led to the requirement, under certain conditions, of a cash deposit from the exhibitor ranging from $50 to $1,000. The credit committee determined the amount of security after giving

[3] Defendants' Brief, page 21.

consideration to the total rental of the pictures likely to be contracted for and the frequency of the exhibitor's possession of prints of such pictures. The cash deposit was not required of new owners who agreed to assume and complete all contracts entered into by the prior owners. It was stated that the purchaser of a theater could secure pictures without posting a deposit on one or as many of his predecessor's contracts as he wished to assume; that he could establish his right to credit prior to time of sale, thereby necessitating no deposit; or that, in any event, he could utilize spot booking for 10 days until his financial reliability was established.

In reply to a question from the court, a secretary of a film board stated that board members followed the recommendations of a credit committee as recommendations rather than as orders, although there was an agreement among members that service to fraudulent transfer accounts constituted the violation of a rule and rendered the offending member subject to a fine. While exchanges had investigated and reported violations, no members had been fined in the territory of the testifying secretary. A rule under which contracts of distributors who served fraudulent transfer accounts would not be recognized in arbitration had been abolished two years previously, according to the secretary's testimony. He further stated that the rule never had been used to penalize an exhibitor.

The operation of the credit committee on accounts which had refused credit information was stated by this secretary to be in the form of individual decisions in so far as the demand for deposit was concerned. An exchange provided film service to an exhibitor with a "CIR" rating, at its own discretion, whereas it was expected to refuse service to one with an "FT" rating.

It was testified that neither the credit committee nor the board dictated to an exchange or its salesmen in the spot booking of pictures after the expiration of the 10-day period required to obtain credit information. It was the responsibility of the exchange manager to ascertain from the credit committee the status of accounts; exchanges did not secure permission on spot booking, but usually informed the committee of service to an account on that basis.

The secretary of the board of trade in another territory testified that financial standing was a significant factor in estab-

lishing the rating of a new exhibitor, although ability and willingness to pay were important. Questioned as to the action that would be taken by his committee in the event that contracts were assumed by an account known to be unpunctual in making payments, he said that the distributor had no alternative but to serve such an exhibitor. Moreover, the secretary had no knowledge of a distributor's refusing to do business with the purchaser of a theater because of an unwillingness to assume existing contracts.

A third territorial board secretary stated that an exhibitor's assumption of contracts was a more important factor in establishing his credit rating, than was his capital. In that territory, there were 328 transfers of theaters in 1928, 16 of which were placed on the FT list. In 140 cases contracts were assumed, and in 13 cases assumption was refused. Of the 16 FT accounts listed during 1928, all but 2 or 3, which had gone out of business, were cleared by the end of the year. It was common policy, stated the secretary, for salesmen in that territory to call upon exhibitors on the credit list for the purpose of making an adjustment of contracts. The secretary testified, also, that investigation determined whether the transfer of a theater was fraudulent or not, and that during the time of investigation, the committee exercised its judgment as to the credit to be extended.

It was the contention of the government that the operations of the credit committees were not in any way concerned with the financial standing and responsibility of motion picture exhibitors, and that they did not perform any of the functions normally expected from credit committees. This contention was based on the fact that an exhibitor starting to operate a new motion picture theater was not required to submit the credit committee questionnaire, and that a new owner assuming all contracts did not come under the restrictions imposed by the credit committee rule. Counsel referred to the form of credit report as lacking information with reference to the financial responsibility, the credit standing, or the business ethics and conduct with reference to paying bills and complying with obligations, of the exhibitors listed thereon. It was held that the only purpose of the credit committee rules was to cause new owners of old motion picture theaters to assume and complete any outstanding contracts left uncompleted by the former owners. The following form was used for credit reports to members of film boards of trade.

DATE 7/9/27

DALLAS FILM BOARD OF TRADE

No. 87

CREDIT COMMITTEE

(Confidential)

Explanations: "C.I.R." Credit information requested or refused.
"F.T." Transferred or sold to avoid existing contracts.
"Pndg" Credit report received—10 days from date of receipt allowed Committee to investigate (spot contracts for 10 day period in order unless security recommended).
"O.K." Transfers where all contracts assumed or credit of new owner OK or OK with security as recommended.

Send "Members' Statement" to Secretary immediately advising status of your contracts when transfers appear hereon and you are affected. If your contracts are being assumed forward assignment or purchaser.

Theater	Town	Contracting Exhibitor	Purchaser	Key Letters	Cash Security
Olympic, Royal.	Floydada	T. L. Kennedy	R. W. Simpson	CIR	
Brown's Pl. Ho.	Pleasanton	C. H. Brown	P. A. Vance	CIR	
Gem..........	Wichita Falls	M. Pois	Dent Theaters	CIR	
Rex	Lubbock	E. L. Dye	H. T. Hodge	CIR	
Bandera.......	Bandera	Warren Hunter	J. C. McMains	CIR	
Elaine	Sinton	P. A. Preddy	Hall Bros.	OK	
Texas.........	Grand Prairie	J. & S. Walker	J. L. Wolfenbarger, Jr.	OK	
Fawn.........	Ft. Worth	L. Westerfield	S. D. Archibald	OK	
Colonial.......	Dallas	Howell Bros.	M. S. White	OK	
Palace, Rialto..	San Antonio	Alamo Am. Co.	Alamo Amusement Co.	.....	$1,000
		L. Santikos	Wm. Epstein or Commerce Realty		

Note: Floydada, all contracts to be assumed. Advise R. W. Simpson, Paducah, Pleasanton. Paramount, Universal & Fox contracts provide for cancellation in event of sale. Pathe status not known. Advise, Wichita Falls, no information. Advise with member's statement. Sinton: 18SA, 4 & 7 assumed. Not assuming 2-3-9-22-19. Grand Prairie, assuming contracts, Note 2-3-18-13-23-7. Advise. Fawn, Ft. Worth assuming all contracts. Advise.

Note Re: Colonial, Dallas. Not assuming contracts.

Re Palace, Rialto, San Antonio. Epstein advises Alamo Amusement Co. still exists & owns these theaters; however, Epstein signs as Gen'l Mgr. of Alamo Amusement Co. Epstein, Aztec and Commerce Realty in default of Arbitration award. The Credit Committee, under these circumstances, recommends a $1,000 deposit on any *new* APPLICATIONS for service in either Palace, Rialto or Aztec whether signed Alamo Amusement or Commerce Realty with Epstein's signature. Members are aware of deposits which are authorized on Aztec contracts by virtue of being in default of Board's award. Service may be resumed on the placing of satisfactory deposit on existing contracts only.

Be sure to send member's statement on Grand Prairie & Fawn, Ft. Worth.

PREVIOUSLY OK WITH SECURITY DEPOSITS RECOMMENDED

Majestic.......................... Alvord "A"
Dreamland.......................... Cleburne "A"
Palace-Ritz.......................... Colorado, See PP.5, Bn.257
Palace.......................... Conroe "B"

The government contended that agreements supplementary to the rules of credit committees existed between members of boards

of trade and that it was the purpose of such agreements to coerce or intimidate purchasers of theaters to assume contracts of a former owner. Such coercion might occur through the members' refusal to supply film service, with the purchaser even deprived of the right of relief in court. The credit system was condemned because it permitted such a practice in restraint of interstate trade and commerce.

The government also maintained that the power given to credit committees was subject to abuse with detriment and damage to the motion picture exhibitor. Discretionary powers were exercised by members having a direct pecuniary interest in the uncompleted contracts. It was claimed that the rules frequently were used, in effect, to compel new owners to assume and to complete contracts, by requiring cash deposits which it might be impossible for owners of small theaters in small towns to make. The government cited, as "one typical instance of this abuse of the credit committee rules and procedure by the Omaha Film Board," the following case:[4]

> The clearance of J. H. Pabst, the new owner of the Princess Theater at Bettendorf, Iowa, was held up for over a year by cooperation between the Omaha, Des Moines and Chicago Film Boards, although there was no evidence of a transfer to avoid existing contracts. It appears that the new owner took over a large proportion of the contracts of the former owner, and the Des Moines Board cleared him, but the Chicago Board insisted on keeping him listed with an "FT" rating of $250. In a letter dated July 20, 1926, to the Omaha Board and the Des Moines Board, the secretary of the Chicago Board stated that the new owner "should not be removed until the Vitagraph contract is fully protected." (p. 51.) On January 26, 1927, the Des Moines Film Board President wrote to Mr. Hess stating the facts and asking that the exhibitor be relieved of the few remaining pictures. Mr. Hess forwarded this letter to the Omaha Board and under date of February 9, 1927, (p. 60) the Omaha Board advised Mr. Hess that they had carefully considered his letter and had eliminated the exhibitor from the list. It is clear that the rating of "FT" was not due to any refusal of the exhibitor to give information but rather to his refusal to take over all the contracts of the former owner.

In answer to the government, counsel for the distributors stated that a majority of new owners were given favorable credit

[4] Government Exhibit 18, pages 50–63.

ratings, and that the number of purchasers who did not assume any part of uncompleted contracts was much larger than the number of cases reported as fraudulent transfer. Counsel contended that, if the intention of the defendants had been to coerce purchasers into assuming uncompleted contracts, the number of FT cases should have approximated the number of purchasers refusing to assume any part of the uncompleted contracts of previous exhibitors. Attention was called to an exhibit showing that "in the case of every Film Board the number of cases reported as fraudulent transfer bears no relation to the number of purchasers refusing to assume any part of contracts." The defendants also introduced the following record of fraudulent transfers and purchasers refusing to assume any part of uncompleted contracts.[5]

	Number of Fraudulent Transfers	Number of Purchasers Refusing to Assume Contracts
1927	212	1,237
1928	175	1,653

It was submitted by counsel for the defendants that the government misapprehended the meaning of the word "credit" in construing it to mean only the capacity to pay, whereas "in the motion picture business, it is not the amount of money an exhibitor has in the bank which determines his rating so much as his moral responsibility."

The counsel for the defendants held that the distributor's need of credit information justified compliance on the part of the exhibitor in filling out the questionnaire. Substantial compliance was stated in testimony to be all that was called for. A willingness to assume contracts was a fair presumption that the new owner would respect the contracts, and in such cases the exhibitor was not required to submit the questionnaire. The testimony established that it was customary to send the questionnaire to a new owner, even if contracts were assumed, in order that the information might be tabulated with the other information at the secretary's office. In the event of refusal to submit the questionnaire in such a case, however, security was not demanded.

The allegation that supplementary agreements existed between branch managers of the distributors was answered by referring to

[5] Defendants' Brief, page 28.

the testimony of three film board secretaries, each of whom denied the existence of such agreements. A summary of the facts relating to a few typical fraudulent transfers was submitted.

The defendants included in their evidence the following typical illustrations of "FT" transfers:[6]

Ritz Theater, Tuscaloosa, Ala., transfer from Francis to King (R. 142–143; Gov. Ex. 4, pp. 1–20).

This is a fraudulent transfer. King, who allegedly took over the theater from Francis, was Francis' machine operator or projectionist, was without any financial resources whatsoever. This theater is approximately 160 miles from Atlanta, (R., 142–143). King repudiated all Francis' contracts (R., 143). However, during the period of investigation, King was spot booked as provided in the Rules (Govt. Ex. 4, p. 6). He, however, refused to put up security for new contracts (R., 142); Francis, the old owner, admitted that he had received cuts in the prices of pictures under his contracts, and claimed his reason for closing his theater was that he was not making money in spite of the cuts in prices which had been given him by the various distributors (Govt. Ex. 4, p. 11). King, the new owner, refused to come to Atlanta, in spite of repeated requests (Govt. Ex. 4, pp. 13, 15, 17, 19), although the expenses involved in coming to Atlanta would only be $10.00, and although he claimed he had a great deal of money involved in the theater (Govt. Ex. 4, p. 18), he was unwilling to incur a $10.00 expense to straighten this matter out. He ran his theater for a considerable length of time on product obtained from an independent exchange (Govt. Ex. 4, p. 18). *He was finally cleared, although no contracts were assumed* (Govt. Ex. 4, p. 20). This theater has since changed hands (R. 143).

Lytton Theatre, Lytton, Iowa; transfer from Jones to H. F. Hull, (R., 188; Govt. Ex. 18, pp. 107–116).

The new owner of this theater, Mr. Hull, agreed with the old owner to assume the old owner's contracts (R., 188; Govt. Ex. 18, p. 109). However, it turned out that the owner had contracted for more pictures than the new owner could play, and the new owner requested help in this matter (Govt. Ex. 18, p. 112). The matter was adjusted through the operation of the Film Board by a cutting down of the number of pictures, so that Mr. Hull could play them out within the period of a year (Govt. Ex. 18, pp. 115–116). It is to be noted that this man never received an unfavorable credit rating (Govt. Ex. 18, p. 108), and the reduction in the number of pictures which he obtained was in spite of the fact that he had agreed with the old owner to assume all outstanding contracts (R., 188–189).

Counsel for the defendants, in maintaining that the rule requiring security of a new owner or operator of a theater who had

[6] Defendants' Brief, pp. 45–48 and p. 53.

been listed as FT was reasonable and did not occasion any hardship, stated:

> The vast majority of new owners are given favorable credit ratings promptly. Only on new contracts with the new owner on an FT transfer are the distributors required to demand security. The FT owner may assume all or any part of the existing contracts without security. An FT rating is not a permanent rating (Rule VIII). During the period of investigation, the new owner may obtain pictures by spot booking without putting up any cash security.

COMMENTARY: Two issues arise in this problem. The first is whether or not distributors are entitled to secure protection against poor credit risk accounts by insisting upon advance payments. In so far as this issue alone is concerned, the answer is undoubtedly "Yes." It was pointed out in the case on block booking that advance deposits were at one time a common rule and that exhibitors requested their abolition except in those cases where a particular exhibitor proved himself unworthy of such confidence. Motion pictures are similar in many respects to products whose value cannot be recovered after having been placed in the hands of a consumer. Thus, railroads require cash payment in advance of giving transportation. Once an exhibitor has shown a picture, it is of no further value to him, and the distributor would find it extremely difficult to make collections. An adequate system of credit protection is perfectly defensible.

The second issue is whether or not a distributor is entitled to use pressure to induce the new operator of a theater to assume the contracts entered into by the previous owner. From the distributor's point of view there is much to be said for such a policy. The transfer of theaters for the express purpose of avoiding contracts undoubtedly occurs. Furthermore, if an exhibitor refuses to show certain pictures, the distributor will have extreme difficulty in selling those pictures in that same territory again. If sold, they may command a lower price than might have been secured for them originally. A substantial argument may be advanced that a distributor sells pictures to a theater and not to the individual who chances to be in charge at the time the salesman calls. It is probable that most independent theaters are unincorporated, and hence the owners buy as proprietors. When theaters are incorporated, the obligation is clearly one of the corporation and is not voided by virtue of the sale to new owners. All these arguments have weight.

On the other hand, there may be real occasion for the readjustment of contracts after sale of a theater. Frequently, an exhibitor feels that he is compelled to sell his theater because he has contracted for

pictures at prices which were unreasonably high; or a salesman in an attempt to secure a greater volume of sales may have browbeaten the exhibitor into overbuying. In other cases a change in local business conditions may have made a fulfillment of the original contract impossible. If a theater is sold under such circumstances the buyer might argue that he is entitled so to readjust his inventory as to give him a reasonable opportunity for success. It must be said that, in theory, the former owner would have had an equally good chance for relief had he applied for it. It is not equally clear that in practice the same measure of relief would be granted him. If, for example, the former owner had been a frequent violator of contract obligations, it is quite understandable that the credit committee might be more willing to make an adjustment with a new man who was able to instill confidence in his sincerity and honesty. It would seem wiser for a distributor to recognize these facts as essentially good business policy than to attempt to enforce conditions unsatisfactory to the exhibitor.

It would appear, therefore, that aside from any question of legality, expediency would suggest to a distributor that when a theater was sold and the new owner wished to readjust the contract, the distributor, before some impartial body, should reconsider the terms proposed by the exhibitor rather than uniformly to insist upon complete compliance with them.

November, 1929 H. T. L.

FBO Productions, Incorporated

PRODUCER AND DISTRIBUTOR—MOTION PICTURES

Sales Cancellations—*Decrease in Number of Cancellations of Contracts.* A producer and distributor of motion pictures, wishing to determine the underlying causes of exhibitor contract cancellations, made a study of the number of cancellations from each exchange, classified according to the reasons for the cancellations. Subsequently, similar reports of cancellations, classified by reasons and by exchanges, were submitted weekly to the general sales manager. These reports, supplemented by periodic audits, enabled the general sales manager to take appropriate steps to maintain and increase the efficiency of the salesforce.

(1927)

In 1927 the general sales manager of FBO Productions, Incorporated, a large producer and distributor of motion pictures, wished to obtain information which would enable him to determine the causes of cancellations of exhibition contracts and, if possible, to reduce the amount of such cancellations.[1] To this end he obtained from the company's statisticians the figures on cancellations of contracts with exhibitors which are shown in Exhibit 1.

In addition to securing these figures, the sales manager had the record of every exhibition contract examined at least once every five weeks to see that exhibition dates were being set promptly for all pictures. Whenever it appeared that a theater was not showing pictures promptly or that it was making numerous cancellations, the sales manager asked an explanation of the exchange manager of the district in which that theater was situated.

Sales of motion pictures were in reality leases of the pictures for exhibition. Generally the dates for the exhibition of the various pictures under a contract were not specified in the contract but were arranged at a later date by negotiation between the exhibitor and the representative of the distributor. Payment for the use of a picture always was made in advance of exhibition or obtained by the distributor by shipping the film of the picture

[1] See Electro Film Corporation, page 93.

EXHIBIT 1

STATEMENT OF SALES, CANCELLATIONS, AND PERCENTAGE OF CANCELLATIONS TO SALES, DURING THE PERIOD FROM JULY 2, 1927, TO DECEMBER 2, 1927, OF PICTURES RELEASED BY FBO PRODUCTIONS, INCORPORATED, IN 1927–28, 1926–27, 1925–26, 1924–25

EXCHANGE	PICTURES RELEASED IN 1927–28			PICTURES RELEASED IN 1926–27			PICTURES RELEASED IN 1925–26			PICTURES RELEASED IN 1924–25*		
	Sales	Cancel-lations	% Can. to Sales	Sales	Cancel-lations	% Can. to Sales	Sales	Cancel-lations	% Can. to Sales	Sales	Cancel-lations	% Can. to to Sales
Albany	$ 80,801	$ 4,828	5.98	$ 9,553	$ 3,491	36.54	$ 585	$ 1,317	225.13	No sales	$ 17	
Atlanta	96,501	4,504	4.67	18,302	15,871	86.72	1,711	11,420	667.45	$ 90	2,287	2,541.11
Boston	402,344	5,567	1.38	20,492	20,145	98.31	1,359	2,235	164.46	No sales	147	
Buffalo	154,516	2,496	1.62	6,631	10,004	150.87	947	992	104.75	51	172	337.25
Charlotte	70,399	1,280	1.82	11,048	8,166	73.91	1,549	5,524	356.62	75	573	764.00
Chicago	322,360	3,450	1.07	17,072	18,513	108.44	4,787	2,713	56.67	2,670	658	24.64
Cincinnati	197,656	1,489	.75	26,887	16,172	60.15	3,277	4,156	126.82	352	913	259.38
Cleveland	168,040	3,265	1.94	11,157	12,282	110.08	2,589	3,432	132.56	125	588	470.40
Dallas	164,451	4,304	2.62	25,500	23,785	93.27	4,053	9,680	238.84	916	1,223	133.52
Denver	77,346	590	.76	19,115	8,745	45.75	3,851	1,762	45.75	237	404	170.46
Des Moines	92,867	1,039	1.12	9,905	4,952	49.99	1,247	730	58.54	174	290	166.67
Detroit	252,708	1,323	.52	11,611	5,056	43.54	1,537	917	59.66	173	122	70.52
Indianapolis	137,689	4,445	3.23	18,526	6,502	35.10	2,377	3,212	135.13	95	413	434.74
Jacksonville	84,363	403	.48	11,915	14,514	121.81	1,243	12,980	1,044.25	No sales	76	
Kansas City	124,704	1,917	1.54	23,635	12,024	50.87	3,276	7,156	218.44	" "	1,641	
Los Angeles	159,519	10,255	6.43	16,753	17,113	102.15	2,341	6,086	259.97	265	793	299.25
Memphis	61,203	10,944	17.88	11,545	11,825	102.43	1,887	5,058	268.04	30	987	3,290.00
Minneapolis	13,989	22	.16	12,147	3,429	28.23	1,753	2,354	134.28	210	1,398	665.71
Milwaukee	99,182	3,621	3.65	36,281	14,524	40.03	6,820	3,868	56.72	295	725	245.76
New Haven	68,534	1,778	2.59	8,007	10,188	127.24	1,171	466	39.80	165		

New Orleans	82,419	708	.86	16,309	15,484	94.94	3,566	4,034	113.12	491	1,042	212.22
New York	659,260	16,676	2.53	25,038	23,544	94.03	419	1,627	388.31	20		
Okla. City	107,521	6,920	6.44	13,431	8,926	66.46	2,336	1,926	82.45	692	400	57.80
Omaha	93,755	322	.34	12,999	8,561	65.86	1,948	3,500	179.67	37	720	1,945.95
Philadelphia	382,581	4,189	1.09	22,594	15,886	70.31	2,214	6,330	285.91	11	3,564	32,400.00
Pittsburgh	174,673	3,586	2.05	11,615	7,242	62.35	1,805	1,944	107.70	280	1,067	381.07
Portland	45,407	....	.....	6,558	7,405	112.92	1,196	1,273	106.44	138	733	531.16
St. Louis	157,460	3,965	2.52	21,062	7,447	35.36	4,456	2,960	66.43	570	2,032	356.49
Salt Lake City	53,875	480	.89	13,729	3,693	26.90	1,723	2,315	134.36	34	218	641.18
San Francisco	113,254	35	.03	8,396	10,340	123.15	1,632	3,771	231.07	92	251	272.83
Seattle	96,640	1,156	1.20	6,239	6,232	99.89	277	2,027	731.77	20	70	350.00
Sioux Falls	48,760	2,180	4.47	12,060	6,780	56.22	2,370	1,745	73.63	58	599	1,032.76
Washington	157,081	4,366	2.78	14,406	8,388	58.23	2,278	1,914	84.02	392	207	52.81
Total U. S. A.	5,091,875	112,115	2.20	510,535	367,242	71.93	74,591	121,435	162.80	8,765	24,340	277.70
" Canada	144,598	4,205	2.91	54,203	21,071	38.87	11,678	9,146	78.32	2,082	4,932	236.89

* Note: Pictures as old as the 1924–25 pictures were in 1927 had practically no sales.

C.O.D. Cancellations of contracts by exhibitors occurred after the contracts had been completed and before definite dates for the showing of the picture had been set. In almost no case did the cancellations involve the return of films and the consequent cost of physical handling.

Once a distributor had determined upon the number and type of pictures it would release during a year, it had committed itself to certain expenditures, both in production and distribution, almost all of which were fixed and did not vary with the volume of sales. After a distributor had contracted for the sale of its pictures to enough theaters to return the cost of production and the maintenance of its organization plus a reasonable allowance for cancellations, the entire revenue of all further sales was an increment to profit. Until this point was reached any cancellations constituted real losses. After sufficient sales had been made to cover all costs, cancellations were merely deductions from possible profit.

Exhibit 2 indicates the total production cost of the pictures released in 1927–1928 by FBO Productions, Incorporated, and the components of that cost. It also shows the gross sales necessary to be made merely to cover all costs, on the assumption that 40% of the total cost of production and distribution would cover the

EXHIBIT 2

PRODUCTION COST OF 1927–1928 PICTURES OF FBO PRODUCTIONS, INCORPORATED, GROSS SALES NECESSARY TO COVER THAT COST, AND TOTAL SALES IN THE UNITED STATES AND CANADA UP TO JANUARY 6, 1928*

1927–28 Pictures	Negative Cost	Print Cost	Advertising Cost	Miscellaneous Cost	Total Production Cost	Gross Sales Necessary to Cover All Costs†	Sales United States and Canada to January 6, 1928
18 Gold Bonds....	$1,750,500	$432,000	$225,000	$57,000	$2,464,500	$4,107,000	$3,855,000
11 Master Showmen........	622,500	219,000	48,000	22,500	912,000	1,520,000	1,572,000
6 Dogs.........	184,500	99,000	10,500	9,000	303,000	505,000	505,500
6 Tylers........	184,500	96,000	9,000	9,000	298,500	497,500	543,000
7 Steeles........	162,000	103,500	13,500	10,500	289,500	482,500	457,500
7 Bartons.......	157,500	103,500	13,500	10,500	285,000	475,000	463,500
12 Beauty Parlor	228,000	76,500	4,500	6,750	315,750	526,250	420,000
12 Karnivals.....	117,000	55,500	4,500	3,750	180,750	301,250	259,500

* Figures have been altered by a fixed percentage.

† On basis of production cost as 60% of total. According to estimates made by the company's executives, about 60% of the total cost of production and distribution was production cost; the other 40% was cost of distribution.

cost of distribution. The last column displays the gross sales of the 1927–1928 pictures to January 6, 1928.

From his long experience in selling motion pictures and from the figures he had received from time to time, the general sales manager estimated that cancellations and adjustments on all types of pictures would total almost 17% of sales. He stated that he always made his calculations on the assumption that from every dollar in sales contracts the company actually would realize 85 cents. If in any season this figure for cancellations increased, he was always able to trace the increase back to some fundamental cause such as a business depression or a widespread disaster, like the Mississippi flood in 1927. Marked increases in this figure over the entire United States usually were due to factors outside the control of the company. Local increases frequently could be corrected, however.

Every year there was a larger volume of cancellations from June to October than during any other time of the year. This period was the beginning of the new selling season when the salesmen permitted exhibitors to cancel some of their contracts for pictures previously released by the company in an effort to secure a large sales volume of the newly released pictures. As the lapse of time after its release lengthened, cancellations of a picture increased. This condition is portrayed in Exhibit 1, which shows a very low percentage of cancellations for the 1927–1928 pictures which were just being released at that time, and a higher percentage of cancellations for pictures that had been released some time previously.

Figures for cancellations of sales of motion pictures were influenced by factors that did not enter into sales of most staple commodities. Although FBO Productions, Incorporated, did not have sufficient information to prove the fact, every member of the sales organization knew that a large proportion of all cancellations consisted of adjustments made to exhibitors to further the sales of the new season's pictures.

Unless the company's employees had been especially vigilant in following up the dating of pictures by exhibitors, by the end of the year there usually were many exhibitors who had contracted for pictures which they had not exhibited. Sometimes these were pictures which the exhibitors considered of unsatisfactory quality and, therefore, had neglected to select dates for, hoping

that an opportunity to cancel them would present itself. Sometimes the exhibitor had contracted for too many pictures and had not had time to exhibit all of them.

When a distributor's salesmen called at the beginning of the selling season to sell the pictures to be released during the ensuing year, an exhibitor frequently took advantage of the desire of the salesman to make sales by attempting to force cancellation of some of the pictures on his previous year's contract. If the exhibitor was in a particularly strong bargaining position, such as that of being the only exhibitor in his zone, he often was able to cancel several of the pictures included in a previous contract before agreeing to purchase any of the new pictures. If he was competing with other exhibitors in the same territory for the pictures of a distributor, he found it more difficult to secure cancellations than if he operated the only theater in the territory.

Most distributors, if they were able to sell an exhibitor pictures to occupy as much of his playing time during the new year as they had during the previous season, did not look upon such cancellations as a loss of business, except for accounting purposes. They knew that the exhibitor had only so many days in a year in which to show pictures and that if all that time was taken up, the mere substitution of new pictures for old pictures was not a real loss of business. Neither the number of sales made during the year nor the number of cancellations had any influence upon the number of pictures to be made, which was determined by other factors.

Overbuying on the part of exhibitors was believed to be one of the causes of the demand for cancellations. Overbuying resulted in part from sales pressure exerted by the distributor's salesmen. It frequently, however, was the result of a deliberate attempt on the part of the exhibitor to overbuy. He did this to protect himself against nondelivery by the distributor. Many times a distributor, after announcing a program and selling to the exhibitors a specified number of pictures, would decide not to make some of the pictures sold and would cancel them from his program and from the contracts he had made with exhibitors.[2] As a result

[2] The Standard Exhibition Contract, used by all distributors that were members of the Motion Picture Producers and Distributors of America, Incorporated, provided:

"In case the Distributor shall be delayed in or prevented from the performance of this contract with respect to any of the photoplays herein specified by reason of

the exhibitor protected himself by contracting for more pictures than he could use. Exhibitors sometimes overbought deliberately in order to keep their competitors from obtaining certain desirable pictures.

Failure to set dates promptly for the exhibition of pictures tended to increase the volume of cancellations. Sometimes an exhibitor would delay in booking specific dates for the showing of a picture because he considered it to be a picture of poor quality. He would delay the date of exhibition, therefore, as long as possible. Often delays in booking dates were the results of oversight on the part of the exhibitor and lack of proper care by the booker at the distributor's exchange. If a booker was lax in the performance of his duties, some pictures would be carried several months and often more than a year after they became available to a theater before they would be booked. Since a large part of the value of a picture to an exhibitor rested in its newness, it behooved the booker to book all pictures as early as possible. If the booker delayed until the picture became "old," he would meet an increased tendency on the part of exhibitors to attempt to cancel the picture from the contract.

Business conditions were the direct cause of many cancellations. Cancellation figures moved in inverse ratio to the conditions of business. When conditions of employment were poor and many men were out of work, the business done by motion picture theaters suffered. As a result many theaters suffered financial losses which forced them to go out of business. This act automatically resulted in the cancellation of all their contracts. Many other theaters would attempt to relieve themselves of the contracts which they considered unfavorable to them. The

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the elements, accidents, strikes, fire, insurrection, acts of God, the public enemy, public calamity, Court orders, censor rulings, delays of any common carrier, delays in production or failure of the producers of any of such photoplays to make or deliver them to the Distributor or of any star or other performer to appear therein in time for delivery as herein provided, or the failure or delay of any prior exhibitor in returning any positive print to the Distributor or in forwarding any positive print to a subsequent exhibitor, then such delay in or prevention of performance shall be excused and all claims or causes of action for damages therefor or arising therefrom are hereby expressly waived by the Exhibitor . . . The resumption of performance by the Distributor shall begin promptly after the removal or abatement of the contingencies or causes of such disability or prevention of performance . . . provided, that if such delay and/or prevention of performance, caused as aforesaid, shall continue for a period of three (3) months either party may cancel this contract, but only with respect to any such photoplay the delivery hereunder of which has been so delayed or prevented, by sending within ten (10) days after the expiration of such three (3) months' period to the other party notice in writing to such effect."

increase in cancellations usually followed the advent of a period of business depression after a little delay, which was due to the habit of most people of spending money for amusements as long as they had any in their pockets. Again, when business conditions began to improve, the motion picture theaters would feel the improvement in advance of many other retailers. This phenomenon was especially marked in the case of a strike. In such a situation the men suddenly finding themselves with additional leisure spent more time than usual in the motion picture theaters until their money became scarce. As soon as employment began again, these same men would immediately begin spending some of their wages for recreation, especially cheap amusement such as the motion picture theaters offered.

FBO Productions, Incorporated, had a large number of customers in the small towns of the United States, many of whom were the operators of small theaters. The natural result of the limited patronage which these small theaters enjoyed was an accentuation of the conditions of depression or prosperity. The larger theaters in the cities, on the other hand, had such large numbers of different classes of people to draw from that the absence of certain people tended to be offset by the presence of other classes of people. Thus the executives of the company believed that poor business conditions affected the company more severely than they did most producers and distributors of motion pictures.

The figures on cancellations which the general sales manager had been receiving showed that the districts of certain exchanges almost always had more cancellations than those of others. Such persistent conditions usually were beyond the control of exchange managers. It generally was true, for instance, that cancellations in the district served from New York City were about 2% of gross sales. This small percentage was due largely to the fact that theaters in that area were operated for the most part by responsible executives and in many cases by corporations of high standing in the community. In parts of the South, on the other hand, where theaters in large numbers were operated by men with little financial backing, who seldom owned their theaters but leased them, cancellations frequently were as high as 50% of sales. In the Dakotas and other parts of the United States where winters were severe, the income of a theater was very seasonal.

In such places, in the dead of winter people did not leave their homes in large numbers to attend theaters. In one winter in a certain section of the Middle West, 96 theaters were closed out of a total of 205. Frequently during unusually severe winters cancellations would be reported in large volume from such places.

In studying cancellation figures the general sales manager took account of persistent local conditions in the districts covered by the different exchanges. He measured cancellations in each section by their percentage of gross sales rather than in terms of dollar volume.

EXHIBIT 3

CAUSES OF CANCELLATIONS, AS CLASSIFIED BY FBO PRODUCTIONS, INCORPORATED

(1) Cancellation to avoid duplication or overstatement of sales.
  Picture of the same or prior years substituted for contract picture.
  Allowance for gratis advertising.
  Contemplated theater did not open.
  Percentage return overestimated.
  Exhibitor availed himself of cancellation privilege in contract.
  Duplication in contracts corrected.
  Error in contract corrected.
  Exhibitor revoked contract before receiving approved copy.
  Same picture previously sold, or now sold, to a theater's opposition.
  Picture resold to same exhibitor on new contract.
  Original pricing unreasonably high.
  Pictures sold for uncontemplated run in exhibitor's area.

(2) Allowances and concessions to exhibitors.
  Exhibitor has lowered price scale of his theater.
    " claims picture not of suitable type.
    " used picture for shorter run than contracted for.
    " was ordered by Film Board to assume contracts left by his predecessor.
    " refuses to give play dates until receiving price concession.
    " demands cancellation of older product in return for buying the newer.
    " has no open dates.
    " losing money at his theater.
  Picture in question was a "flop" at exhibitor's theater.
  Exhibitor says he has changed type of picture presented by him.

(3) Cancellations arising from acts or omissions of FBO.
  No print remaining in good condition.
  " " available when wanted.
  Print did not pass censorship.
  Error in shipment.
  Print delayed in transit.
  " returned late from preceding exhibitor.
  Picture released late.
  FBO violated express or implied protection agreement as to order of runs.

(4) Theater closed—failure, fire, cold weather (open air theaters), orders of fire marshal, flood, etc.

(5) New owner refuses to accept responsibility for former owner's contracts.

(6) Redistribution of sales (for accounting purposes).

(7) Miscellaneous.

To enable him to make more accurate judgments on conditions in the sales territories, it was necessary that the general sales manager be furnished with additional figures for cancellations, classified according to the reasons for the cancellations. Thus he could evaluate correctly the work of the exchange managers and the conditions of business in the different exchange districts. The general sales manager requested the statistician to supply such information.

In preparing to give the general sales manager this information the statistician first analyzed all recent cancellations. From this analysis he worked out a tentative list of reasons for cancellations, as shown in Exhibit 3.

After submitting his classification to other executives for criticism the statistician collected information showing the volume of cancellations, by reasons, for several weeks. Total cancellations for the entire United States, by reasons, for five different weeks, are shown in Exhibit 4. Subsequently, similar reports of cancellations, classified by reasons and by exchanges, were placed on the desk of the general sales manager every week.

With these figures before him the general sales manager was in position to make a careful analysis of the territory served by each exchange. The information kept him informed of business conditions in each territory. It also enabled him to check the efficiency of the exchange managers. Combining this information and that received in other reports with his personal judgment of

EXHIBIT 4

APPROVED CANCELLATIONS (UNITED STATES ONLY) BY REASONS, AS COMPILED BY FBO PRODUCTIONS, INCORPORATED

	Weeks Ending				
	November 4, 1927	November 11, 1927	February 3, 1928	February 10, 1928	March 2, 1928
Reason No. 1	$17,533.51	$10,929.03	$13,194.79	$15,224.24	$15,151.73
" " 2	4,785.00	8,087.92	8,150.60	4,268.66	7,499.37
" " 3	477.50	2,288.45	200.75	683.00	362.75
" " 4	9,027.50	12,994.90	1,677.00	21,496.73	16,168.50
" " 5	15,605.00	3,014.75	1,905.00	8,088.00	3,865.50
" " 6	....	....	1,121.50	2,920.20	1,788.25
" " 7	224.00	2,421.75	27.50	664.50	237.50
Totals	$47,652.51	$39,736.80	$26,277.14	$53,345.33	$45,073.60

the exchange managers, he was able to take appropriate steps to maintain and increase the efficiency of the salesforce. The weekly reports of cancellations supplemented the periodic audits made by the accounting department by drawing the immediate attention of the general sales manager to the condition of accounts in every exchange. When the general sales manager believed that the condition of accounts in an exchange could be attributed to the careless performance of his duties by the exchange manager, the sales manager usually wrote the exchange manager a letter asking him to make an effort to improve the conditions. In some cases he visited the exchange manager to discuss the situation. When the reports indicated that there was serious trouble in an exchange, more drastic action was taken. This action frequently constituted an audit by the accounting department or the dismissal of the exchange manager.

COMMENTARY: There is not sufficient evidence in the case to permit a detailed discussion of the policy to be adopted by this company relative to cancellations. The general approach was essentially sound. It is a wise policy to attack all problems of cancellation with the purpose of determining the underlying causes and of dealing specifically with those causes. The object should be to avoid cancellations rather than to devise some policy of meeting them after they have occurred. In this particular case, the classification of causes is open to some question. What is indicated as the first cause includes such diverse items as "contemplated theater did not open" and "exhibitor availed himself of cancellation privilege in contract," as well as "unreasonably high pricing." These are not of the same character. Consequently the figures indicated in Exhibit 4 are of less value than they might be, and any attempt to evaluate the relative importance of the various reasons becomes impossible.

It is apparent, of course, that even had this error not occurred in the analysis, no panacea for the problem of cancellations could be expected. The problem is perhaps less serious at present than it was at the time this case was prepared, because of the increase in the number of distributor-controlled theaters. Obviously, the fewer independent theaters there are the fewer cancellations there are likely to be.

November, 1929 H. T. L.

Pathe Exchange, Incorporated

PRODUCER AND DISTRIBUTOR—MOTION PICTURES

Pricing—*Basis Changed from Flat Rental to Percentage for Superspecial Picture.* A corporation producing and distributing motion pictures desired to receive maximum returns on a superspecial production. For this particular picture it decided to change from its regular flat rental pricing policy to a guaranty and percentage basis, to extend the length of run, and to specify an increase in the admission prices charged by exhibitors. The success of this plan depended upon the character of the salesmanship. The company believed that if its salesmen properly understood the high quality of the picture and its popularity as a box office attraction, this knowledge would give them confidence in the product, which would result in satisfactory percentage contracts with exhibitors.

(1928)

At the opening of the selling season for the year 1928–1929 in May, 1928, the general sales manager of Pathe Exchange, Incorporated, found it necessary to formulate a sales plan for the general distribution of "The King of Kings,"[1] a picture based on the life, death, and resurrection of the Christ. This picture was classified as a superspecial production.

Pathe Exchange, Incorporated, a producer and distributor of motion pictures with main offices in New York City, operated 31 branch exchanges in the several distributing centers of the United States. Canadian sales and distribution were handled on a percentage basis by Regal Films, Ltd., of Toronto. All types of pictures, including features, westerns, newsreels, comedies, short subjects, and educational films, were distributed. The company was one of the largest in the industry, with 1927 sales in excess of $17,000,000. The company sold to all types of theaters, often selling to first-run and second-run theaters in the same zone.

In order to obtain the maximum return on "The King of Kings," the company decided to sell the picture entirely independent of all other Pathe product. "The King of Kings" was one of the outstanding productions of 1927. Its production cost, not

[1] See Pathe Exchange, Incorporated, page 409.

including advertising and exploitation expense, was in the vicinity of $2,000,000. It had been "roadshown" at advanced admission prices in leading cities of the world with record attendances. The picture offered excellent opportunities to the exhibitor for exploitation and advertising. Pathe Exchange, Incorporated, had spent approximately $1,250,000 in advertising the picture during the period of road exhibition.

In the development of a sales plan the first consideration was to insure, for every engagement, sufficient length of run to provide seats for every prospective customer in the community from which a showing of "The King of Kings" might be expected to draw patronage. The experience of roadshow engagements had demonstrated that the picture was one which built up its run by reason of enthusiastic word-of-mouth praise. In setting the playing time, therefore, it was necessary to make the length of run a marked increase over the maximum playing time ever before set by an exhibitor on any motion picture.

A schedule was prepared specifying the minimum length of engagement which would be required. Since this anticipated, or schedule, run might well be less than conditions subsequently warranted, because of the possibility of drawing patronage from a larger community than the company had estimated in setting up the schedule, or because of other changes in a local situation, salesmen were instructed to obtain contracts with a maximum playing time. In addition to the maximum playing time determined by a salesman and an exhibitor as stated in the contract, the company desired to protect itself and the exhibitor by a fair carry-over clause which, should receipts during the run of the picture warrant such action, would require the exhibitor to extend his original play time. Each salesman was instructed to include such a provision in writing a contract.

The prestige of the picture was believed to be sufficient reason for advancing admission prices over those charged for usual engagements of special pictures. Increased box office prices during the roadshow engagement had indicated that the public was not averse to paying higher prices. Salesmen were expected to prepare a price scale for each theater in accordance with that theater's particular conditions, but a minimum of 50 cents for adults at either matinee or evening performances and 25 cents for children was to be observed.

In order that the picture might be adequately exploited, the company had prepared a press book containing special advertising material, stories, and cuts for advertisements for the picture. Salesmen were instructed to take particular care to assist the exhibitors in conducting the right sort of advertising campaign. In order to insure that an exhibitor capitalized on the exploitation value of the picture, definite commitments on advertising expense as a part of the exhibition contract would be inserted by each salesman.

The company was particularly concerned about securing play dates which would give the picture and the exhibitor the most advantageous days of the week; Sundays were particularly desired because of the nature of the subject of the picture. It also desired wherever possible to avoid the exhibition of "The King of Kings" against unnecessarily strong competition. Inasmuch as it was impossible to determine the most advantageous days in advance or to anticipate the competition, the salesmen were made responsible for fixing the play dates.

In order to secure rentals commensurate with the value of the picture, Pathe Exchange, Incorporated, desired to distribute the picture on a guaranty and percentage basis. In distributing its product the company heretofore had followed a policy of selling on the basis of flat rentals. Percentage contracts were not favored by exhibitors as a rule, and most distributors were unwilling to assume the necessary work on checking box office revenue which was required by this system. The company believed, however, that when an important attraction such as "The King of Kings" appeared in a program, it deserved a substantial proportion of the gross admissions, a proportion greater than might be obtained by flat rental. In the opinion of the company, there was scarcely a theater in the country that would not profit through playing this attraction on the basis of an equal division of receipts. The company was prepared to check practically every percentage engagement which, in its opinion, justified such a procedure by reason of gross receipts on previous roadshow attractions.

Two plans involving rental terms were set up. In the first plan a fair figure was to be set as a guaranty which the exhibitor was to pay to the distributor. The guaranty would be computed on the basis of satisfactory play dates, the proper number of playing days, extensive advertising, and adequate admission

prices. Beginning with the first dollar taken in at the box office, the exhibitor would pay to the distributor a fixed percentage ranging from 33⅓% to 50% of the box office receipts until the guaranty figure was reached. All receipts in excess of this guaranty were to be divided, 50% to the exhibitor and 50% to the distributor, or either 55–45, 60–40, 65–35, 70–30, or 75–25, the distributor receiving the larger percentage. The first percentage as well as the divisional percentage was to be determined by negotiation between the salesman and the exhibitor. It was the salesman's responsibility to secure the highest possible percentages consistent with fairness. The importance of the theater, competitive offers, and confidential information furnished by the home office relative to the drawing power of special pictures in the locality, were to guide the salesman in negotiating arrangements that were fair and equitable to both the customer and the company. The company believed, however, that "The King of Kings" was entitled to at least 50% of gross receipts in most of the principal theaters in the country. The company's experience indicated that an exhibitor who objected to disclosing his house expenses in order to arrive at a fair percentage, was perfectly willing to pay a fair guaranty against 50% of his gross receipts.

The second plan provided for the sale of the picture on the basis of a guaranty against a split percentage over an amount covering overhead, guaranty, all advertising, and a normal profit for the exhibitor, the profit to average about 25% of the guaranty. Sales on this basis necessitated an accurate itemization of theater expenses to accompany the contract application. Exhibitors were often hesitant to divulge theater expenses and receipts, because of the possibility that the distributor's salesmen might use a favorable statement as a reason for raising future prices. Where such information was available, however, the prospects of securing an equitable arrangement were enhanced. Salesmen were expected to use the same care and intelligence in securing the highest possible guaranty and divisional percentage as under the first plan.

In certain instances, the company expected that it would be impracticable to sell the picture on any type of sharing arrangement. In remote towns where the expense of checking would be prohibitive, for example, it would be necessary to resort to flat rentals figured on the basis of maximum box office possibilities

under proper exhibition conditions. Experience had shown that in small towns where no matinee showings were made, flat rentals on the basis of the picture's drawing 1½ capacities a night were justified. For example, the possibilities of a theater seating 300 people, operating evenings only, charging an admission of 50 cents, and running the picture three days a week, could be fairly figured as follows: 1½ capacities, or 450 admissions per night for three nights (1,350), at 50 cents would represent $675, and a flat rental of 50%, or $337.50, would be figured accordingly. The salesmen were warned that only in those rare instances where percentage pricing was impracticable should flat rentals be used.

The company was interested in securing an extension of run wherever possible. An extension of run clause was not included in the contract, but space was provided for insertion by the salesman of such a carry-over clause, with terms contingent upon specified gross receipts for the opening days of an engagement. Runs and protection were to be determined by the general policy of the theater; an exhibitor's demand for greatly increased protection, either as to area or as to time, was to be carefully investigated, in order that such protection would not hold up bookings and revenue from other theaters. In order that no misunderstandings might result, the careless practice of writing a second-run contract to read, for example, "after the Strand or Rialto Theater," would be guarded against; such a statement implied a guaranty that the picture would be exhibited at those theaters,[2] whereas conditions might develop under which it would be more advantageous to sell to some other first-run theater. The contract was to specify explicitly the agreement with the exhibitor relative to the time of running the picture.

The question of the days of the week on which the picture would be exhibited was one of the most vital elements in a percentage sharing contract. The salesmen were instructed to obtain specific dates at the time of application as far as possible, and if the desired scheduled dates were not obtainable, to reach a definite agreement with the customer as to the days of the week, and indicate the opening and closing week days as a part of the exhibition clause in the contract.

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[2] Film boards of trade have decided that in a second-run contract with such an agreement the exhibitor had bought something the distributor could not deliver and that the contract was therefore abrogated.

Each branch manager was instructed to chart the allotment of prints and to schedule them for exhibition throughout the territory in order of revenue, importance, effect of a showing on following runs, protection requirements, etc.

The company cautioned its salesmen with respect to misrepresentation of any sort. No application for exhibition should be accepted unless the exhibitor understood exactly what he was contracting for in his agreement. Promises other than those specifically mentioned in the contract were not to be made. Situations would often occur in which an established customer of Pathe Exchange, Incorporated, would not be the best outlet for exhibition of "The King of Kings" in a particular city. The company decided that in such instances the value of the picture demanded the most profitable outlet, and instructed its salesmen to approach the best exhibitor irrespective of previous dealings.

Pathe Exchange, Incorporated, recognized that the sales plan for "The King of Kings" placed the responsibility with the individual salesman. Salesmen were so advised, as follows:

> You may well be proud of your association with "The King of Kings." You have a tremendous responsibility and a wonderful opportunity for service to exhibitors and the public and as you meet these, will you succeed.
>
> As a sales representative of "The King of Kings," you are bringing to exhibitors the greatest motion picture ever produced—a picture that is doing more to advance the cause of motion pictures and exhibitors' interests in general than anything which has heretofore ever appeared upon the screen. You are bringing exhibitors an entertainment that, by the box office test, has been definitely established as entertainment the public wants and for which it will generously pay at exhibitors' box offices.
>
> In conclusion, let us say that in order for you to have confidence in yourself, you must have faith in what you are going to sell. Faith is the essential condition of confidence and confidence is the essential condition of success. Faith comes from knowledge—KNOW THE KING OF KINGS. Without this faith, without this belief, there would be no basis for suggesting to an exhibitor that he make the booking. Some of the qualities of a salesman are preparedness, faith, confidence, cheerfulness, courtesy, initiative, courage, perseverance, determination, concentration, health, character, judgment, and expression. These qualities also make a man, and Pathe man power is something of which we are mighty proud.

While the minimum price of a picture was specified in the rental schedule, each salesman largely determined the terms of rental in fixing the percentages. Salesmen were informed that any sale that failed to meet a standard test of comparison would not be approved. Any sale that did not give the company a fair percentage of the gross receipts was below standard; any sale where the admission price was not commensurate with the known entertainment value was not an acceptable contract; any sale that ignored the important factors of exploitation, advertising, and proper playing time, was not worthy of consideration. A contract that protected the company on some points but ignored others would be rejected.[3]

[3] For commentary, see commentary on following case of Pathe Exchange, Incorporated, page 415.

PATHE EXCHANGE, INCORPORATED

PRODUCER AND DISTRIBUTOR—MOTION PICTURES

ADVERTISING—*Consumer Advertising of Motion Picture.* A producer and distributor of motion pictures desired to advertise an expensive and elaborate picture direct to the public. Like other distributors, the company formerly had directed most of its advertising to exhibitors. It decided to carry on a properly timed, direct to the consumer, national advertising campaign. The campaign assisted the company's salesmen in selling the picture to exhibitors and in securing higher prices than usual.

(1928)

In 1928, Pathe Exchange, Incorporated, a producer and distributor of motion pictures, released for general distribution in the United States "The King of Kings," a motion picture based on the life, death, and resurrection of the Christ. This picture, which had cost $2,000,000 to produce, had been directed by Cecil B. DeMille, a well known director. The executives of the company were of the opinion that it was one of the finest pictures ever produced by the company and that it could be made an unusually popular and commercially successful picture if properly merchandised and advertised to the public. Except in rare cases, they planned to sell the picture on a percentage basis, so that the company would share directly in the extraordinary income the picture was expected to earn. Although the company, up to that time, never had carried on an extensive advertising campaign directly to the public, it decided upon a thorough national advertising campaign for this picture.

Production of "The King of Kings" had been completed in 1927 and the company had roadshown the picture for its own account for about a year in the principal cities and towns in the United States. These roadshows had met with unusual success. At the Gaiety Theatre in New York City the picture ran for 35 weeks at $2 per seat. At Grauman's Chinese Theatre in Los Angeles it ran for 24 weeks at $1.50 per seat. Elsewhere the roadshows ran from one to nine weeks. In many cities the picture

had been shown at repeat engagements and in Cincinnati and St. Louis it had been called back for a third run.

The picture had been the subject of favorable comment and had received considerable publicity in all sections of the United States. The press, clergymen of all denominations, and educators had endorsed the picture favorably. The company planned in its 1928 advertising to take advantage of this publicity which the picture had received while it was being roadshown.

With the exception of the Paramount Famous Lasky Corporation and the Universal Pictures Corporation, distributors of motion pictures in the United States had advertised directly to consumers only to a very limited extent, but had directed most of their advertising efforts to exhibitors. The chief reason for not advertising directly to consumers was the belief that people selected a theater for the convenience of its location, its reputation for pleasing entertainment, and their preference for a star playing in a picture rather than because of their preference for pictures bearing any special trade-mark. Believing that it was not possible to influence the public to differentiate, on the basis of trade-marks, between elements of a class of product the individual specimens of which were as diverse in quality as were motion pictures, most distributors had exerted no consistent effort to impress their trade-marks upon the consuming public.

A further reason for distributors' belief that they could not effectively advertise their pictures nationally to consumers was that, in their opinion, such advertising would result in an increase in the sales of only the specific pictures advertised. Each series of advertisements, therefore, ceased to be effective as soon as the pictures which were advertised had been exhibited. It was the opinion of distributors that in the minds of consumers there was no association between any past series of advertisements for particular pictures and the subsequent advertising of other pictures released at a later date by the same distributor. They believed, furthermore, that inasmuch as many pictures were sold to exhibitors for a flat sum there would be a large number of sales on which a distributing company would not benefit directly from consumer advertising. The company would share the benefits of its advertising only in cases in which it had sold its pictures on a percentage basis.

The expense and difficulty of timing advertisements in either national magazines or local newspapers with the exhibition dates of a distributor's many customers also was a deterrent to consumer advertising by distributors. It was considered impossible to time national advertisements of a motion picture with all the individual exhibition dates of the 6,000 to 13,000 exhibitors who would show that picture during the 18 months or two years following its release. It would have been difficult for Pathe Exchange, Incorporated, to carry on local newspaper advertising each time one of its pictures was being shown by a theater. It would have been expensive and difficult to maintain the elaborate organization that would have been required to insert the correct advertisements in hundreds of newspapers throughout the United States. The newspaper space used would have cost more than the company's executives believed the advertising would be worth to the company. For these reasons local advertising was left to the exhibitors, with the assistance of various advertising helps furnished by the distributor at cost.

Pathe Exchange, Incorporated, followed the practice of the majority of distributors by devoting about 90% of its advertising appropriation to advertising to exhibitors. The greater part of the remaining 10% of the appropriation was spent on consumer advertising in the so-called "fan" magazines such as *Photoplay*, *Screenland*, *Film Fun*, and others. These magazines had most of their circulation among people interested in the industry and among those who were regular attendants at motion picture theaters.

In spite of its usual practice, the company considered the use of consumer advertising for "The King of Kings," for several reasons. In the first place, the executives believed the picture to be an unusual one which was peculiarly adapted to unusual publicity and advertising and to special sales effort. The picture had a much wider appeal than most motion pictures. Moreover, it would appeal to many persons who were not regular theater patrons and who, therefore, would not be reached by the ordinary theater advertising.

The company decided that an advertising campaign directed to the public should be adopted that would seek to interest all classes of people. By agreeing to have the picture available for simultaneous exhibition in 500 theaters during the three weeks

following the appearance of the advertisements, the company hoped to stimulate a strong buying desire on the part of exhibitors and thus secure a higher price from many theaters than could be expected from them for an ordinary special picture. The company also hoped that the readers of the advertisements would bring pressure to bear upon exhibitors to show the picture.

The picture was to be sold as a special, and a sufficient number of prints were to be made to enable 500 exhibitors to show the picture within three weeks after the appearance of the advertisements to the consumers. It was decided to release the picture on October 1, 1928, and to carry two-page spreads in the September 29th issues of the *Saturday Evening Post* and *Collier's* and in the nearest issues of six "fan" magazines, *Photoplay*, *Motion Picture Magazine*, *Motion Picture Classic*, *Picture Play*, *Screenland*, and *Film Fun*. The *Saturday Evening Post* and *Collier's*, because of their large general circulation, were selected as the most effective means of reaching the mass of the American consuming public. The "fan" magazines were used to reach those regular motion picture patrons who read magazines of this type. Exhibit 1 shows the advertising rates and circulation of the magazines in which "The King of Kings" was advertised.

A special budget of approximately $75,000 was set aside to advertise this picture to consumers. This amount was to be in addition to the usual trade advertising. It was hoped that more than the amount of this expenditure would be returned to the company because of the higher prices its salesmen would be able

EXHIBIT 1

ADVERTISING RATES AND CIRCULATION OF MAGAZINES IN WHICH "THE KING OF KINGS" ADVERTISEMENTS APPEARED*

	Cost of One Full Page Advertisement for One Insertion	Circulation (Six Months' Average)
Saturday Evening Post	$8,000	2,902,093
Collier's	4,500	1,643,017
Photoplay	1,200	547,605
Motion Picture Magazine	750	338,973
Motion Picture Classic	550	160,549
Picture Play	450	148,085
Screenland	315	133,118
Film Fun	210	106,936

* Source: *Standard Rate & Data Service.*

to secure from the exhibitors, who in turn hoped to secure larger profits by taking advantage of the company's advertising. The production department was requested to provide 225 prints without sound and 25 prints synchronized with sound effects. Since those exhibitors who were likely to take advantage of the company's national advertising to consumers would probably want to show the picture sometime during the first three weeks in October but not all during the first week, this number of prints was considered sufficient. At this time less than 800 motion picture theaters in the United States were equipped to reproduce sound synchronized with pictures.

In addition to its advertising in national magazines, the company decided to try to book the picture for showing during a period two or three weeks long, in a large number of theaters in and near Chicago, and to insert special advertisements in the *Chicago American* and the *Chicago Tribune*. Special conditions in the Chicago area, such as the existence of one or two large chains of theaters, made this plan possible. Inasmuch as Chicago was the second largest theatrical center in the United States, the carrying out of such a plan, it was believed, would result in large returns. A similar plan was not tried in other large cities because it would have been too expensive to repeat the campaign more than once or twice.

The company secured a large number of bookings from the theaters in and adjacent to Chicago for the latter part of October and the first half of November, and on October 27 inserted full-page advertisements in the two newspapers selected. The advertisement in the *Tribune* was in black and white and that in the *American* was in color. The cost of the advertisement in the *Tribune* was $2,750, and of that in the *American* $2,000. It proved impossible to conduct the advertising in Chicago at the same time that the national advertising appeared, for the reason that enough bookings for the picture could not be secured during the first half of October. Eighty-four bookings, the earliest being for October 4 and the latest for November 16, were listed in the advertisements. It was recognized that the special campaign in Chicago, because it was run subsequent to the national advertisements, would not enjoy the full benefit of the national advertisements. It was believed, however, that newspaper advertisements would create the desired effect, with the assistance of

whatever carry-over effect there might be from the national advertisements.

Since the campaign was decided upon before the 1928–1929 selling season began, the salesmen, on going into the field, had as their leading product "The King of Kings," which they might sell to 500 exhibitors for exhibition early in October. The picture was sold individually and had no connection with other pictures of the 1928–1929 product which the salesmen had for sale.

The advertising department supported the salesmen with a campaign in trade papers, inserting in the leading trade papers two-page spreads and four-page sections that designated the company's advertising plan as one of the "greatest box office merchandising ideas of all time" and "a sensational national advertising campaign timed with your theater showing." These advertisements called attention to the fact that the names of the theaters which were to show the picture in October would be listed in the advertisements to consumers. They further stressed the greatness of the picture, its remarkable success when roadshown, and the value of the publicity and advertising the picture had received while being roadshown. It was also indicated that the national consumer advertising would be paid for entirely by the company. The trade paper advertisements further reminded exhibitors that more than 4,000,000 readers would see the advertisements in the *Saturday Evening Post* and *Collier's* alone. The advertising manager estimated that about 30% of the special budget of $75,000 appropriated for this advertising campaign was expended for trade paper advertising.

The salesmen were given the usual press sheets containing advertising material, suggested advertisements, suggestions for exploiting the picture, and news stories about the picture which might be handed to the local newspapers by exhibitors. Descriptive booklets were mailed to the exhibitors before the salesmen called. These booklets were about 10 by 15 inches and contained 20 pages of printed matter and handsomely finished pictures of scenes in "The King of Kings." They described the picture and gave many facts about the unusual success of the roadshows and the publicity the picture had received.

The company inserted in the September 29th issues of the *Saturday Evening Post* and *Collier's* and in the nearest issues of *Photoplay*, *Motion Picture Magazine*, *Motion Picture Classic*,

Picture Play, *Screenland*, and *Film Fun* two page spreads showing three scenes from the picture and bearing across the top of the spreads in large letters the words, "For the first time at popular prices Cecil B. DeMille's King of Kings, the greatest picture ever produced, can now be seen in every motion picture theater." Most exhibitors made no advance over their established scale of prices when they showed such special pictures as "The King of Kings." In general, the higher price motion picture shows were roadshows of new pictures conducted by the distributors. Pathe Exchange, Incorporated, required that theaters exhibiting "The King of Kings" charge not less than 50 cents as evening admission price.

Executives of the company were convinced that the advertising campaign had been effective. At a sales convention held shortly after the campaign a large number of the company's exchange managers expressed the opinion that, whether or not the campaign had been effective in persuading the public to see "The King of Kings," it had been of assistance in selling the picture to the exhibitors, most of whom were persuaded that the campaign assisted them. The campaign caused some exhibitors to book the picture for an earlier showing than they otherwise might have done. It did not, however, result in a large volume of early sales, since the salesmen spent more effort in securing high prices for the picture than in effecting a large number of sales. Satisfactory prices were obtained on most of the early sales. By September 29th "The King of Kings" had been sold to 1765 accounts and on November 27th to 3444 accounts. These figures were lower than for an ordinary picture at that time in the selling season. The company expected to sell the picture to many smaller theaters later in the season.

COMMENTARY: This case, together with the preceding case of Pathe Exchange, Incorporated, (page 402) illustrates the method by which a superspecial picture was sold to key exhibitors. It may be noted that the picture was roadshown prior to the time that it was sold to the exhibitors. As a roadshown picture it was markedly successful, and exhibitors were in many instances anxious to obtain the picture. It should also be observed that the picture, "The King of Kings," was a motion picture of especially high quality. Because of its quality it lent itself admirably to an aggressive sales campaign as a superspecial. Experience has made clear that no amount of sales promotional work

can make a success of a poor picture. Box office receipts may be high for the first few exhibitions. Word-of-mouth criticism, however, invariably causes a sharp reduction in attendance, regardless of general advertising, when a picture is of poor quality. The same principle operates in the reverse manner. A poorly advertised picture may, during the latter days of its run, prove unusually successful because of word-of-mouth comments. In other words, the quality of the picture is, after all, the essential thing.

The large amount of responsibility placed upon salesmen should be noted in this case. This responsibility extended to the determination of the particular form of percentage pricing to be followed as well as to datings. In the present instance this was probably wise.

The advertising problem was somewhat simpler in this case than where an ordinary feature picture is presented. Seventy per cent of the advertising was directed to the consumer. The advertising was confined to exploiting the merits of a single picture. The difficulties usually encountered in attempting to time advertising with exhibition were largely avoided by arranging for the simultaneous release of the picture in 500 theaters within the first three weeks after the appearance of the advertisements. The provision for definite commitments on the part of exhibitors on advertising appropriations was based upon the idea that the local exhibitors should cooperate largely in local appeals. The value of such local cooperation is unquestionable and applies to features and other pictures as well as to superspecials. There is frequently a marked tendency on the part of some exhibitors to rely upon the distributor to carry the advertising burden. Such exhibitors expect the mere name of the star and of the picture to provide sufficient appeal for patrons. For some pictures this appeal may suffice, but it is too much to expect of the great run of pictures that they will attract the public without further sales promotional work. The name of a picture, its distinctive merits, the date of exhibition, the accessibility and attractiveness of the theater, all need repeated emphasis. Competition, not only between theaters but between rival forms of entertainment, is too keen to allow any exhibitor to expect success by relying wholly upon such very general advertising as the distributor may do.

The present case is of general interest also because of the fact that there appears to be somewhat of a tendency to stress individual pictures more, and groups or blocks of pictures less than formerly, both in pricing and in sales promotional work.

November, 1929 H. T. L.

Goldstein, Incorporated[1]

PRODUCER AND DISTRIBUTOR—MOTION PICTURES

Advertising—*Maintenance of Broadway Exploitation Theater.* A producer and distributor of motion pictures had maintained at a loss a Broadway exploitation theater in New York City. At the expiration of the lease in 1929 the advisability of renewal was questioned. The president of the corporation opposed the renewal of the lease on the grounds that a successful New York run was frequently not indicative of the reception that the country outside New York City would give to the picture. Although some executives of the company believed the losses of operating the theater were more than offset by the advertising value, it was the president's opinion that the exploitation theater was not fulfilling its purpose of enabling the company to secure higher than average film rentals for the pictures shown there.

(1929)

In December, 1929, Goldstein, Incorporated, considered the advisability of renewing its lease on the Cairo Theater, the company's Broadway exploitation house. Broadway exploitation houses comprised a group of theaters located in the Times Square area of New York City, which the larger motion picture companies used as "show windows" in which to give prerelease exhibitions of their new pictures. Such exploitation, they believed, tended to develop a market for the picture so shown. Since 1925, the Cairo Theater had been used for the exploitation of outstanding Goldstein pictures, many of which had enjoyed runs of from four weeks to three months. Admission prices ranged from $1.50 to $2. Although a profit had been sought on such exhibition, the primary purpose had been to exploit the company's pictures in such a manner as to increase their distribution throughout the country, and at the same time secure higher than average rentals. In 1929, a number of the company's executives, doubtful of the merits of the Broadway exploitation theory, opposed a renewal of the lease on the Cairo Theater.

Goldstein, Incorporated, was a well established producer and distributor of motion pictures, operating a large chain of various

[1] Fictitious name.

types of theaters located throughout the United States. Over 50% of the company's annual sales volume was derived from theaters other than its own. Distribution was effected through 35 exchanges situated in the important key cities. Annual production comprised about 35 feature pictures and an equal number of short subjects. Goldstein pictures, as a general rule, were of excellent quality.

The introduction of the Broadway exploitation plan in the motion picture industry antedated the period of development of producer-controlled theater chains by a number of years. At that time, Goldstein, Incorporated, and several other large distributors were confronted with numerous problems, two of which were of immediate importance. The first was that of producing a few superspecial pictures which would stimulate the then waning public interest in motion pictures. The second problem involved the exploitation of these pictures in such a manner as to increase patronage and at the same time insure widespread distribution at rentals commensurate with the value of such pictures. The production of superspecials, although a difficult and expensive task, was, nevertheless, accomplished. All companies, however, found the independent exhibitor unwilling to exploit the exhibition of these pictures in any other than the customary manner, much less to pay higher than average rentals for them.

Confronted with this situation, Goldstein, Incorporated, and other producer-distributors conceived the idea of a motion picture roadshow. Roadshow motion picture productions, as defined in the Warner Brothers Franchise Agreement, were, "any motion pictures released by a distributor which shall be exhibited in the main theatrical district of New York City and one other key point, on a prerelease basis; that is to say, on a basis whereby only two shows a day are given at advanced admission prices. Such exhibition in the main theatrical district of New York City shall not be for less than four consecutive weeks." The roadshow plan was similar to that of typical theatrical roadshows, with motion pictures substituted for the customary troupe of actors and actresses. To carry out the plan, each producer formed a special department consisting of a manager, assistants, exploiters, operators, checkers, etc. Legitimate theaters, in the larger cities throughout the country, were engaged for limited periods, usually on a percentage basis. As a general rule, two performances were

given daily with admission prices ranging from $1 to $2. To avoid booking complications, pictures roadshown were designated as such, their general release sometimes being withheld for as much as a year after they had first been roadshown to the public. Naturally producers endeavored to make a profit from this special type of exhibition. The primary motive, however, was that of stimulating consumer and exhibitor interest in the pictures so shown, and to obtain, thereby, higher rentals for them.

The following are excerpts taken from the new Standard Exhibition Contract:

> The distributor shall have the right to exhibit, or cause to be exhibited, as a roadshow, at any time prior to the exhibition thereof, hereunder, such photoplays selected by the distributor provided, however, that such roadshow exhibitions shall be in theaters at which admission prices for evening performances are not less than $1 for the majority of orchestra seats, and further provided that except in the cities of New York and Los Angeles, not more than two such photoplays shall be so roadshown.
>
> The distributor has the right to exclude not more than two pictures roadshown, in New York, from general release in the territory served by the distributor's New York exchange, provided that the distributors have been notified eight weeks after the commencement of such roadshow exhibition, and further provided that the distributor shall by a like notice exclude such photoplays from exhibition in all other theaters in that territory. The same ruling applies to pictures roadshown in Los Angeles.
>
> Distributors, in order to roadshow photoplays in cities other than New York and Los Angeles, must notify contracted exhibitors in those territories to that effect, 14 days after the commencement of such roadshow exhibition. This applies to all theaters within the United States.
>
> For each photoplay that the distributor shall except and exclude as aforesaid, the Exhibitor is hereby granted the option to exclude from this license one of the other photoplays licensed hereunder, only, however, if the Exhibitor shall give the distributor written notice to that effect not later than 14 days before the date fixed for the exhibition hereunder of such other photoplay.

In general, the roadshow plan accomplished its purpose. The public's response was favorable and higher rentals were subsequently received from exhibitors. Furthermore, many independent exhibitors were stimulated to better and more vigorous exploitation. From a financial standpoint, with but few exceptions, the roadshow plan resulted in sizable losses. *Mystic*[2] was

[2] Fictitious name.

the only roadshown Goldstein picture that had returned a profit. On all others, more or less heavy losses resulted. Since Goldstein, Incorporated, classified all deficits from roadshowing as advertising expense, such losses were added to the distribution costs of the films so shown prior to the establishment of their regular release rental quota. In the case of *Mystic*, the profit was deducted from the cost of distribution, the exhibitors benefiting thereby from slightly lower rentals than they otherwise would have paid.

As originally conceived, Broadway exploitation theaters were a part of the roadshow plan. For several reasons, however, they came to be of a more permanent character. In the first place, New York offered a large market which was both accustomed and willing to pay higher than average theatrical admission prices. Secondly, practically all the business functions of the motion picture industry were centered in the Times Square district. Finally, and of greatest importance, was the common belief, prior to 1929, among many in the industry, that a New York long-run success at top prices not only provided valuable advertising propaganda, but in itself assured country-wide popularity for the picture. For these reasons and despite the fact that rather general losses resulted from such exhibitions, practically all the large producers were induced to lease and to operate such theaters as the Cairo Theater. The total cost of operating Broadway exploitation theaters had been estimated conservatively to be between \$15,000 and \$20,000 per week. Receipts from pictures of average quality shown at these theaters ranged between \$9,000 and \$14,000 a week. Only the exceptional pictures returned a profit from such runs.

With the advent of large national theater chains, and to a lesser extent with the introduction of sound pictures, the popularity of the roadshow plan diminished rapidly. Satisfactory exploitation, de luxe theaters, and first-class equipment were assured producers through their own or their affiliated theaters, or through the theaters of competing producers. Furthermore, since it was natural that the regular motion picture theaters would be wired for sound first, it followed that in many cases the legitimate theaters could not be used for roadshow purposes, since they were not equipped for exhibition of the new type of production. Finally, the public at large became less willing to

pay higher prices to see motion pictures which at a later date could be seen at popular rates.

Despite this rather general disappearance of the motion picture roadshow throughout the country, the New York exploitation theaters continued to operate. They were among the first to be wired for sound. Producers controlling them insisted on their sales promotional value, concurring in the opinion that Broadway's tastes in motion pictures were indicative of the tastes of the rest of the country. Further, there had not been any noticeable reduction in their patronage.

Evidence indicating that some producers had changed their attitude toward Broadway exploitation houses appeared with the practice of exploiting and exhibiting numerous regular feature pictures and several superspecials in some of the larger cities throughout the country, prior to their exhibition in New York City. In the latter part of 1929, several motion picture periodicals conducted surveys to determine the attitude in the trade on the merits of the Broadway exploitation plan. In general, the consensus of opinion among exhibitors was divided.[3] Producer-distributors declared that they would strive to make outstanding photoplays, but that since a New York run had little value unless associated with a superb attraction, in general, they would exercise discretion in the selection of films for special runs. According to the *Film Daily*, September 22, 1929, the Paramount Famous Lasky Corporation and Metro-Goldwyn-Mayer Pictures Corporation were inclined toward fewer roadshows. The Fox Film Corporation planned to relinquish the Gaiety Theater and, therefore, temporarily at least, would not have a Broadway extended-run house. Warner Brothers, Incorporated, and First National Pictures, Incorporated, since they had achieved unusual financial success with their advanced price engagements on Broadway, planned to continue such runs as they deemed suitable to that trade. The Radio-Keith-Orpheum Corporation, the Columbia Pictures Corporation, and Pathe Exchange, Incorporated, each planned several pictures for Broadway showing at advanced prices, as did Tiffany Productions, Incorporated, which recently had acquired a lease on the Gaiety Theater. The question of Broadway advanced price showings of United Artists pictures rested entirely with the individual producers.

[3] *Exhibitors Herald-World*, September 21, 1929.

In considering their specific problem regarding the Cairo Theater, the executives of Goldstein, Incorporated, advanced arguments both for and against the advisability of renewing the lease.

The Cairo Theater, located in the heart of the Broadway theatrical district, had a seating capacity of approximately 1,600. Although of an obsolete type of construction, it had been renovated and equipped with modern devices, including refrigeration and sound reproducers. The acoustical properties were excellent. The proscenium arch and general layout of the theater would not require alteration for the exhibition of wide films. The property owners suggested lease renewals for either 5 or 10 years. The rentals involved, based on comparative values, were considered exceptionally low.

The president of Goldstein, Incorporated, was definitely opposed to a renewal of the lease. In his opinion the losses on the Cairo Theater were not justified. He believed that Broadway exploitation had passed the period of usefulness and that people outside New York City and its adjoining areas were not particularly interested in what New York liked in motion pictures or in what it paid to see them. It was his opinion, furthermore, that the public at large judged all motion pictures primarily on the basis of their material content, that is, the star, the supporting cast, and the story, and to a lesser extent on their local exploitation. He proposed that rather than schedule a few superspecials for Broadway exploitation-runs, the company should endeavor to produce a constant flow of good box office attractions for general release.

Several additional arguments substantiated the president's opinion. First, the company's records indicated that since the latter part of 1928, higher than average film rentals had not been obtained on all pictures prereleased for Broadway exploitation. As a matter of fact, only two pictures so shown had commanded appreciably higher rentals. These pictures were unquestionably of outstanding quality. Another factor was the retardation of the general release dates. In some instances three months had elapsed before a film, after having been exploited on Broadway, was placed in general circulation. Aside from the interest charges accruing on the investment during these periods of inactivity, the problem of obsolescence had to be taken into consideration. The latter problem was particularly important

in 1929, because of the rapidity with which technical improvements were being made.

The company's sales manager, expressing the opinion of the distribution department, stated that he found it increasingly difficult to sell pictures on the strength of a Broadway exploitation-run. Such runs, in his opinion, could not make a success of a poor picture. He believed that producers had nullified a large part of the value of the plan in booking a large number of program pictures for Broadway exploitation-runs. The public had become aware of this practice and, therefore, was little influenced by publicity based upon it. Furthermore, the scope of New York publicity was confined to a definite area which did not include the Midwest, South, and Far West. In his opinion, the publicity radiating from the various key centers was far more important than Broadway exploitation, principally because of local customs and preferences. He believed that a typical Broadway picture seldom proved of outstanding value in the country at large and that the company should, therefore, endeavor to avoid producing an unreasonable number of pictures that dealt in particular with the New York point of view.

Another executive, while recognizing the value of Broadway exploitation for genuinely outstanding pictures, considered these, however, too few to warrant the operation of a theater solely for that purpose. He believed, furthermore, that an outstanding success in one or more of the ordinary, larger, continuous-run theaters carried more real advertising value for such films than did exploitation showing. In his opinion, wholly aside from the advertising value to be derived from exploitation, there was but one reason why the company might be justified in renewing its lease on the Cairo Theater, namely, to secure a temporary outlet for an occasional Goldstein film, the distribution of which was retarded because of production and booking complications.

The advertising manager enumerated several factors favoring a renewal of the lease on the Cairo Theater. In the first place, the losses from operation, he believed, were more than offset by the advertising value. In his opinion, advertisements in local trade papers telling of a New York success, while perhaps not increasing rentals, did, nevertheless, facilitate distribution by their influence on exhibitors. Secondly, since film purchases for the large national chains were made in New York City, the value

of a successful Broadway pre-release showing was of vital importance. Again, there was the possibility of telling the public that it could see the best motion pictures for but a fraction of the price that New York paid to see them. Moreover, if advertisements stressing New York successes were inserted in local newspapers, the public could be influenced to talk about such pictures before their arrival. In his opinion, small town motion picture patrons were influenced by the magic of a New York success even to the extent of paying higher than average admission prices. Finally, a Broadway run provided the best method by which the company's films could be tested.

COMMENTARY: The early success of roadshown pictures was doubtless due to the fact that such pictures were of a distinctly superior grade, as compared with the average program pictures of that period. The public would have attended certain of these exhibitions in any event, because of a belief that a picture shown in a theater that had been largely devoted to legitimate plays, would be one that had a special attraction. As time went on, however, an increasing number of pictures were roadshown, and in many cases these pictures were not notably better than many which were exhibited in motion picture houses. The public lost its interest in such pictures, therefore, particularly when it had to pay advanced admission prices to see them.

The policy of this company of adding the losses which developed on roadshown pictures to the cost of the negative, may be justified only on the assumption that such pictures were roadshown primarily for exploitation purposes. It is interesting to note that this company deducted from the cost of the negative the profit made on at least one picture, and sold the picture to exhibitors at a lower price in consequence. If the picture was so successful as a roadshow that it made a profit when most of such pictures resulted in losses, it might be argued that the company was in a position to charge exhibitors more, rather than less. One suspects that in most cases distributors would be likely to adopt this latter policy, especially since most distributors feel that there is little relation between negative cost and rental value.

The policy of exploiting pictures on Broadway is one which is open to some question. The case makes clear that a majority of pictures so shown result in losses to the company. The only justification for Broadway exploitation, therefore, lies in the belief that exhibitors buy pictures more readily if they have been previously so exhibited. The evidence in the case is not clear that any such advantage is derived by the distributor. In many cases exhibitors throughout the country are unwilling to pay higher prices for such pictures. Furthermore,

contrary to the belief of a substantial number of producers, there is no assurance that a Broadway success guarantees success in the rest of the country. It may safely be said that many pictures, unusually successful on Broadway, have been rather poorly received in many other sections of the country. The president of Goldstein, Incorporated, expressed it as his opinion "that the public at large judged all motion pictures primarily on a basis of their material content, that is, the star, the supporting cast, and the story, and to a lesser extent on their local exploitation." The inherent value of a picture is, after all, the thing which makes it a success. The tendency on the part of distributors to exhibit on Broadway, pictures of no particular outstanding merit, to offer but two exhibitions a day, and to charge advanced admission prices to such showings, undoubtedly has lessened the value of Broadway showings.

If this reasoning is correct, the logical question to ask is whether or not an amount of money equivalent to the losses on such exhibitions could not be more profitably spent, then, on improving the quality of the picture, or in some other form of advertising. To the commentator either of these latter policies is, in the main, preferable.

Two other considerations, however, need to be borne in mind. The first relates to the independent producer who owns no theaters of his own, and who must rely for his distribution very largely upon sales to the large chain theaters. Such a producer may have an additional sales argument when he can show that his particular picture was well received on Broadway. Whether or not the value of this argument is great enough to compensate for the losses which he probably will incur in many instances, as a result of such showings, is an open question. If, as is probably true, the buyer for a chain of theaters judges the value of a picture from an actual observance of the picture and an estimate of its value, then the argument for exploitation is materially weakened. It loses still more of its force if it is realized that Broadway acceptance does not guarantee nation-wide acceptance.

The second consideration has to do with the policies to be pursued by companies who own Broadway theaters. It would be better to keep such houses open and get whatever income might be derived from them, even though some loss might be incurred, than to close them altogether and thus suffer a still greater loss. Much may be said for the policy, in such instances, of operating these houses for such returns as may be derived from them, rather than on the theory that they are primarily exploitation centers. The showing of good, high-grade pictures, particularly adaptable to New York audiences, at more moderate prices on a continuous-run policy, would seem to be a logical conclusion.

March, 1930 H. T. L.

Califilm Corporation[1]

PRODUCER AND DISTRIBUTOR—MOTION PICTURES

Advertising—*By Producer to Consumer and Exhibitor.* A producer and distributor of motion pictures had developed a coordinated program of consumer and trade advertising. The consumer advertising was carried on through carefully selected national magazines and the exhibitor advertising through trade papers with national circulation, regional trade papers, folders, and special announcements. The company trade-mark was emphasized in all its advertisements.

(1925–1928)

In 1917, the Califilm Corporation, a large producer and distributor of motion pictures, had determined upon a coordinated program of consumer and trade advertising. Since that time the consumer advertising program had been carried out through advertisements in several national magazines, occasional newspaper advertisements, advertisements in "fan" magazines, and a small amount of outdoor advertising. The company was spending about $600,000 annually for its consumer advertising. Between 1925 and 1928 the company gave careful attention to its trade advertising, with a view to organizing this advertising so as to cover the exhibitors' field as effectively as possible.

The customary means of advertising to the motion picture trade were: the insertion of advertisements in trade papers; the publishing of annual announcements, some of which were mailed to exhibitors and some inserted in trade magazines; and special advertisements and announcements to exhibitors made during the year. Annual announcements were published each spring by distributors as soon as they had determined what their next season's programs would include. The announcements were printed in time to be available for distribution to salesmen at the annual sales conventions usually held in May. Advertisements were inserted regularly in the trade papers. A number of trade papers with circulation among exhibitors were available for advertising. Among these were: the *Film Daily*, the *Exhibitors Daily*

[1] Fictitious name.

Review, *Zit's*, *Variety*, the *Motion Picture News*, the *Exhibitors Herald*, *Motion Pictures Today*, and the *Moving Picture World*. The *Exhibitors Herald* and the *Moving Picture World* were combined in 1928 and became the *Exhibitors Herald and Moving Picture World* [and later the *Exhibitors Herald-World*].

The *Film Daily*, containing from 4 to 16 pages, was published daily in New York City. It carried all the latest news of the motion picture business. It had a circulation of about 5,300, of which approximately 3,500 were exhibitors. This publication was read chiefly by the executives of the big producing and distributing companies in the industry and the larger exhibitors who could afford to subscribe to the paper and who wished to follow in detail the daily events in the industry. The subscription price was $10 per year, which included the *Film Daily Year Book*, an authoritative book of information on the industry.

The *Exhibitors Daily Review*, a daily paper of about the same size as the *Film Daily*, was published in New York City. Its news policy was similar to that of the *Film Daily*. It claimed a total circulation of 3,500. This magazine was read by about the same class of readers as the *Film Daily*. The subscription price was $10 per year.

Zit's was a general amusement trade paper published weekly in New York City. Originally it had published only the news of the vaudeville and legitimate theaters, but with the advent of the motion picture to a place of prominence, it had begun to publish also the news of that field. Its subscription price was $7 per year.

Variety, a large weekly paper founded in 1905, published the news of vaudeville, the legitimate stage, and the motion picture studio and theater. It was published in New York City. It was read widely by executives in the amusement business, including those interested in motion pictures. *Variety* claimed a circulation of 35,000. It was sold on the news stands in New York City in larger numbers than any other motion picture trade paper. The annual subscription was $10.

Motion Picture News was a weekly magazine published in New York City. It carried all the news of the motion picture business. Inasmuch as its subscription price was only $3 per year, it was read by a larger number of exhibitors than the daily papers or the general amusement papers. Motion picture exhibitors generally were interested in following the current news of the

industry, but many did not find it necessary to follow daily changes as did the executives of the large companies. Many exhibitors were several days from New York by mail and found it just as satisfactory to read the news once a week as to read a daily paper several days old. *Motion Picture News* had a circulation among exhibitors of about 6,500.

Another weekly paper similar to *Motion Picture News*, which enjoyed a large circulation among exhibitors, was the *Exhibitors Herald and Moving Picture World*. It was published weekly in Chicago. It usually contained from 40 to 80 pages. Its news policy was the same as that of the *Motion Picture News*. The *Exhibitors Herald and Moving Picture World* had a circulation among exhibitors of approximately 10,500. The subscription

EXHIBIT 1

ANALYSIS OF CIRCULATION OF *Exhibitors Herald and Moving Picture World*

Net paid average circulation (average for the 6 months' period ending June 30, 1928)		13,417
Total Distribution		14,137
Distribution within trade (mail only)		
Exhibitors field	10,573	
Production field	425	
Distribution field	985	
Equipment field	163	
Miscellaneous	673	12,819

Geographic Analysis of Distribution

New England States	
Maine	168
New Hampshire	91
Vermont	65
Massachusetts	425
Rhode Island	47
Connecticut	152
East North Central	
Ohio	607
Indiana	368
Illinois	813
Michigan	452
Wisconsin	367
West South Central	
Arkansas	136
Louisiana	166
Oklahoma	233
Texas	502
Middle Atlantic States	
New York	1,237
New Jersey	182
Pennsylvania	713
East South Central	
Kentucky	141
Tennessee	114
Alabama	137
Mississippi	85
Mountain States	
Montana	82
Idaho	85
Wyoming	50
Colorado	148
New Mexico	37
Arizona	36
Utah	92
Nevada	18
South Atlantic States	
Delaware	16
Maryland	103
District of Col.	67
Virginia	106
West Virginia	141
North Carolina	156
South Carolina	75
Georgia	138
Florida	142
West North Central	
Minnesota	275
Iowa	396
Missouri	375
North Dakota	107
South Dakota	140
Nebraska	309
Kansas	302
Pacific States	
Washington	212
Oregon	151
California	829

Miscellaneous and Foreign..........1,077

price was $3 per year. The company publishing the *Exhibitors Herald and Moving Picture World* was the only motion picture publisher that was a member of the Audit Bureau of Circulation. Exhibit 1 shows an analysis of the circulation of this magazine, given by the *Standard Rate and Data Service* for November, 1928. Such information was not available for the other magazines.

Motion Pictures Today was a weekly paper published in New York City. It was largely an editorial paper and took active part in many of the controversies in the industry. It was owned by the owner of the *Exhibitors Daily Review*. *Motion Pictures Today* claimed a circulation, not entirely paid, of 25,000. Its subscription price was $2 per year.

Exhibit 2 lists the advertising rates of several of the motion picture trade papers.

EXHIBIT 2

ADVERTISING RATES OF CERTAIN MOTION PICTURE AND AMUSEMENT TRADE PAPERS*

	1 Page	⅔ Page	½ page	¼ Page
Film Daily				
1 time	$180.00	......	$ 90.00	$ 45.00
13 times	160.00	......	80.00	40.00
26 times	150.00	......	75.00	37.50
52 times	140.00	......	75.00	37.50
Exhibitors Daily Review				
1 time	125.00	......	67.00	36.00
24 times	120.00	......	64.00	34.00
72 times	110.00	......	60.00	32.00
260 times	100.00	......	55.00	30.00
Zit's—Unit Rates	400.00	......	200.00	100.00
Variety				
Transient rates	500.00	......	260.00	135.00
Motion Picture News				
1 time	165.00	......	87.50	47.00
13 times	160.00	......	85.00	45.00
26 times	155.00	......	82.50	42.50
52 times	150.00	......	80.00	40.00
Exhibitors Herald and Moving Picture World				
1 time	200.00	$133.50	100.00	
13 times	185.00	123.50	92.50	
26 times	175.00	117.00	87.50	
Motion Pictures Today				
1 time	250.00	......	130.00	65.00
13 times	225.00	......	117.00	58.50
26 times	200.00	......	104.00	52.00

* Source: *Standard Rate and Data Service*, November, 1928.

In addition to these trade papers with national circulation, there were a number of regional trade papers of limited circulation. These included: *Great Amusement*, the *Film News*, the *Ohio Showman*, the *Movie Age*, the *Michigan Film Review*, the *New England Showman*, and others.

The Califilm Corporation depended upon the trade papers for most of its advertising to exhibitors. Its normal appropriation for such advertising exceeded $100,000 per year. It advertised throughout the year in *Film Daily*, *Motion Picture News*, *Exhibitors Herald and Moving Picture World*, *Motion Pictures Today*, *Exhibitors Daily Review*, *Variety*, and *Zit's*. Advertisements also were inserted about once a month in 20 regional trade papers. The company advertised more extensively during the period just after its annual announcement was made in the spring than at any other time during the year. It maintained throughout the year a regular weekly schedule of trade paper advertising. The company estimated that it used 25% more advertising space in trade journals from May to January each year than it did from January to May. The company carried the bulk of its advertising in strictly motion picture magazines because they reached the largest number of exhibitors. Although other amusement trade magazines were not devoted exclusively to the motion picture field, the company employed them also because it believed that advertising in their columns reached a number of prospective customers which might not be reached through the other mediums which it employed.

The advertising copy inserted in *Motion Picture News*, *Exhibitors Herald and Moving Picture World*, and *Film Daily* frequently was in two or more colors, illustrated with pictures of the stars acting in the company's motion pictures and of scenes from the pictures being advertised. The use of color and the arrangement of the copy had been studied by the company's advertising manager, who attempted to endow his trade paper advertising with a modified modernistic touch. The advertisements in *Variety* and *Zit's*, which were printed on ordinary newspaper print paper, were of necessity in black and white and in composition were similar to newspaper advertisements.

In all its trade advertising the company emphasized its trademark. While each advertisement usually advertised certain pictures and stars it also always contained the company's trade-

mark and some statement to the effect that the company's pictures always were of high quality. By this repetition the company expected to establish its trade-mark and name in the minds of exhibitors as synonymous with high-grade pictures. In all its advertisements the company appealed to the exhibitor's desire to make a profit by insisting that exhibitors would make more money with the company's pictures than with any others. Whenever possible the company supported these statements with proof of the results of unusually successful exhibitions of its pictures. The company made a definite attempt to avoid the sensational exaggerated advertising that was so common in the advertising of motion pictures. It believed that the advertising done by many other companies which declared that each new picture was "the greatest ever produced" and the "sensation of the year" was not effective for two reasons. The first was that such advertising was not believed by the readers, and the other was that if superlatives were used always, there would be no expressions at hand to describe effectively the truly unusual pictures when they were advertised.

Although it was difficult to measure the results of trade paper advertising for the reason that those to whom it was directed were appealed to in many other ways, the company's executives were of the opinion that the trade paper advertising was effective. They realized, however, that most of the important sales were made to the large chains of theaters whose buyers were well acquainted with proposed production schedules and generally knew what company's pictures they wanted before the trade advertising was published. Many of these sales were made by the company's sales executives in the New York office.

Another important means of advertising to the exhibitors was the annual announcement of the pictures the company intended to release during the ensuing season. Each year, as soon as the production department had decided upon its program for the year, the advertising department began preparing the annual announcement so that it would be in readiness for distribution to the salesmen at the annual sales convention held in April or May. The advertising department usually prepared for each picture a page or more in four or five colors containing pictures and printed matter descriptive of the film. A brief statement of the story or type of story was usually given, together

with the names of the author, director, and actors. Each page always bore the company's trade-mark against a background of attractive art work. An attempt was made to stress the strongest points of each picture and to appeal to the exhibitors' desire to make a profit by describing the potential drawing power of the picture. The annual announcements usually were made the same size as the trade papers in which the company did most of its advertising so that they might be inserted in those papers without alteration.

In 1927–1928, and again in 1928–1929, the company prepared 30,000 copies of its annual announcement at a cost of about $15,000. Between 1920 and 1926 the preparation of annual announcements by the distributing companies had become increasingly a competitive matter, with each distributor vying with the others to outdo them in elaborateness of announcements. In 1926–1927, as a result of this competitive effort and to mark its fifteenth anniversary, the company issued a very elaborate annual announcement bound in leather, which was distributed to all exhibitors. The cost of the announcements that year was several times their usual cost. During that year practically all distributors decided to cease giving annual announcements to all exhibitors, and to cut their expenditures for announcements to a reasonable amount.

Of the 30,000 copies of the company's annual announcements printed in 1927–1928, 2,000 were used by sales executives and salesmen throughout the world. Of these 2,000, about 730 were bound in cloth at a cost of about 22 cents each. About 25,000 announcements were inserted in the trade papers.

For a number of years most distributors of motion pictures had inserted their annual announcements of the new season's productions in certain of the trade papers. A majority of the distributors prepared their annual announcements themselves and furnished the trade papers with the actual pages that were to be inserted in the papers. Arrangements were made with the papers to pay for the space used on the understanding that the pages would be in the hands of the trade papers in time to be bound up with the rest of the paper. Most distributors inserted their annual announcements in the media selected only once, although many of them frequently followed the first insertion

with insertions of portions of the annual announcements dealing with pictures which it was desired to advertise particularly.

Distributors had come to an agreement among themselves not to insert any annual announcements in the trade papers prior to May 1 each year. All distributors, therefore, attempted to arrange with the trade papers for an insertion as soon as possible after May 1. As a rule, each of the leading distributors arranged with the trade papers that its announcement be the only one carried in that issue in which its announcement was published.

In 1928 the Califilm Corporation arranged with *Motion Picture News* and *Exhibitors Herald and Moving Picture World* for the insertion of its complete announcements in the issues of May 5th. It also inserted portions of the annual announcement in subsequent issues of trade papers. In 1928–1929, the company paid to the two magazines in which it inserted its complete announcement a total of $13,500 for the space used.

Among the folders, special announcements, and other miscellaneous advertisements sent to exhibitors, one of distinctive importance was the *Exhibitors Date Book* which was given each year to all exhibitors buying the company's pictures and to any others requesting it. About 15,000 copies were prepared each year at a cost of about $1,200. The date book was carefully prepared to meet the needs of the exhibitors so that they would use it throughout the year. It was made up in the form of a pocket size account book neatly bound in imitation leather, with the company's trade-mark on the front. Most of the book was devoted to a diary in which the exhibitor might write the names of the pictures he had booked for the different days in the year. This section provided space for the name of the company from which the exhibitor bought the picture, a statement of the special conditions under which he bought, the date on which the film was to be returned, and other information. Another section of the book provided a simple accounting system which enabled the exhibitor to keep a record of his receipts and expenses.

Commentary: The use of trade advertising as providing a general preliminary announcement of the offerings of a distributor is of great value. Exhibitors come to look for such announcements and doubtless read them with great care. The exhibitor is interested, furthermore, in facts relative to cast, story, director, and the general reputation of the producer. It may be doubted, however, whether the name

of the producer or of the director has any appreciable weight outside of the trade.

The usual forms of motion picture trade advertising are of somewhat less importance now than formerly because so large a proportion of the sales are made to the chain theater organizations through direct personal contact. The buyers in these instances probably know as much about the picture as do the salesmen. General trade announcements are therefore less effective in these cases.

Two distinct criticisms may be made of most trade advertisements. One is that they tend to be extremely blatant even for ordinary pictures. When a distributor wishes to describe a really exceptional picture, he is frequently at a loss for vocabulary with which to do it. A second weakness is partially a result of the first, namely that most trade advertising is very substantially discounted by exhibitors as being overoptimistic though not actually untruthful.

It may be seriously questioned whether the policies followed by distributors in the past relative to trade advertising have been as productive of results as they should have been. The necessity and the real value of trade journal advertising are not to be discounted, but that it has not been used in as efficient a manner as possible is true. Frequently, the advertising has been dissipated over too many trade journals. In 1929, there were between 60 and 70 trade and "fan" publications of which over one-half were directed specifically to exhibitors. Undoubtedly but a very limited number of these reached many exhibitors. Granting the necessity of a number of worthwhile trade journals, one might reasonably raise the question as to whether or not distributors were wasting money by advertising in a very considerable number of journals of rather dubious value.

Irrespective of the value of trade journals to exhibitors, and irrespective of whatever monetary returns the distributors may obtain as a direct result of such advertising, it has sometimes been contended that certain distributors carry advertisements in the more influential trade journals because of a desire to obtain favorable editorial support. This, it is held, is extremely important, particularly where frequent differences arise as between distributors and exhibitors.

Many of these comments have no particular application to the Califilm Corporation program, which seems to have been particularly well planned, the mediums having been well selected, and the emphasis placed on the proper point.

November, 1929 H. T. L.

Baldwin Pictures Corporation[1]

PRODUCER AND DISTRIBUTOR—MOTION PICTURES

Advertising—*Adoption of Consumer Advertising.* A company producing and distributing motion pictures had advertised to exhibitors only, prior to 1916, when it decided to follow the recommendation of an advertising agency by attempting to build up consumer preference for its pictures through advertisements in national magazines, "fan" magazines, and newspapers. During its first year of general consumer advertising, the company attempted to stimulate primary demand for motion pictures. Subsequently it directed less attention to the stimulation of primary demand and more to emphasis of its trade-mark.

(1916)

The Baldwin Pictures Corporation was a large producer of motion pictures distributing its product to exhibitors through a subsidiary company. The pictures were sold to exhibitors in the form of a service of two pictures per week throughout the year. In 1917 the company began to sell its pictures each year in two or three blocks. The company endeavored to make all its pictures of consistently high quality.

Prior to 1916 the only advertising the company had undertaken had been that directed to exhibitors. This advertising had consisted of full-page advertisements in the leading trade magazines and of occasional special advertisements, such as pamphlets, describing the company's pictures. The company advertised in practically every issue of the leading trade papers. The advertisements emphasized the profit-making possibilities of the company's pictures. In 1916, Longstreet, Incorporated,[1] an advertising agency, recommended to the Baldwin Pictures Corporation that a program of advertising be adopted which would include, in addition to the usual trade advertising, advertisements in national magazines and other media, directed to theater-goers.

The only consumer advertising of motion pictures that had been undertaken before 1916 had been such local advertising

[1] Fictitious name.

as was carried on and paid for by the exhibitor to support the particular pictures he was showing. This consisted of advertising in local newspapers, the use of posters in the lobby of the theater, and some billboard and poster advertising. In the opinion of the advertising executives of the Baldwin Pictures Corporation, this advertising usually was crude and ineffective. Very few exhibitors had any knowledge of advertising principles and those who did were usually too busily engaged with more pressing problems to give the proper attention to their advertising.

Advertising directed to the consumer had not been undertaken consistently by producers or distributors because, in their opinion, it was impossible to establish through advertising the trade-mark of any line of products the individual specimens of which were as dissimilar as were motion pictures. Producers and distributors believed, moreover, that it was not practicable to advertise individual pictures for the reason that such advertising could not be timed with the many exhibition dates of exhibitors throughout the United States without great expense.[2] To be effective, it was necessary that advertising of an individual picture be read by the consumer shortly before that picture was exhibited at a theater in his city. If the advertisement appeared after the showing of the picture, it, of course, would have no effect. If, on the other hand, it appeared too long a time before the showing of the picture, it would create the impression that the picture in question was old and that it was being shown in that town or city long after it had been shown elsewhere.

Previous to 1916 the Baldwin Pictures Corporation, like other producers, had accepted as conclusive these reasons for not advertising to consumers. Longstreet, Incorporated, however, was not satisfied with these reasons. Its executives were of the opinion that well planned advertising with emphasis on the company's trade-mark, addressed to the consumer through the pages of the national magazines, would influence the consumer to choose the company's pictures more frequently than pictures which were not advertised. The agency believed the theater-going public could be influenced to demand that the exhibitors show the pictures of that company which emphasized to the public that its pictures were consistently of high quality. The agency did not propose to try to advertise individual pictures

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[2] See Pathe Exchange, Incorporated, page 409.

locally in coordination with the local exhibitions. The executives of the Baldwin Pictures Corporation decided, in 1916, to undertake an experiment of advertising to consumers, and permitted the advertising agency to make a survey to determine what magazines should be used.

Since there were at that time no commonly accepted means of reaching cinema patrons except through the "fan" magazines, the agency proposed to address questionnaires to a large number of exhibitors. Exhibitors, being in direct contact with the public, were thought to be in a position to interpret the public's reading and motion picture habits. The agency established an office in Chicago, not under its own name. From this office it communicated with exhibitors by mail. This means of reaching the exhibitors was adopted because the agency believed that exhibitors would be more free to give their real opinions to such an office than to an advertising agency. The office operated under its own name, purporting to be conducting research studies. It sent a questionnaire to a large number of first-run exhibitors in towns and cities of all sizes throughout the United States.

The following are substantially the questions included in the questionnaire:

1. In your opinion what results might be obtained from a program of consumer advertising conducted by a producer or distributor?
2. What member of the family determines the choice of motion pictures or of motion picture theaters?
3. How does the volume of your matinee business compare with that of your evening business?
4. What is the nature of your matinee patronage?
5. What magazines do you think are read by most of your patrons?
6. What magazines do you read regularly?

A fair percentage of replies was received, and the executives of the advertising agency believed they had secured a satisfactory sample of the opinions of exhibitors throughout the United States. While the exhibitors were not united on the subject of the first question, many of them seemed to believe that a producer or distributor could increase the popularity of his pictures greatly by advertising them directly to the public. Some exhibitors might have been influenced in their reply to this question by the belief that they would benefit directly by such advertising on the part

of producers. The replies to the second question indicated that exhibitors were not decided as to just which member of a family decided what pictures the family would see, but they all agreed that the women of the family probably influenced the decision as much as, if not more than, the men. Most exhibitors reported that their matinee business had reached a substantial volume and was increasing. No definite figures were obtained. Most matinee audiences were composed largely of women.

The responses to the inquiry as to what magazines most patrons read showed that many of the people who attended the motion picture theaters regularly read some of the motion picture fan magazines, such as *Photoplay*, *Film Fun*, *Picture Play*, *Motion Picture Classic*, and others. In the opinions of the exhibitors, the following were the four national magazines read by the largest number of theater-goers: the *Saturday Evening Post*, the *Ladies Home Journal*, the *Literary Digest*, and the *Pictorial Review*. A tabulation of the replies showed that the *Saturday Evening Post* clearly headed the list and that the *Ladies Home Journal* was second. The *American Magazine* was listed by many exhibitors as being widely read by their patrons. The agency judged the accuracy of an exhibitor's replies about theater-goers from his own reading list submitted in response to the sixth question. The list of magazines which the exhibitors said they read gave the agency a clear indication of the type of men answering the questionnaire.

In 1917 the company launched a program of consumer advertising in national magazines, fan magazines, and certain newspapers. It inserted full-page advertisements in black and white in every other issue of the *Saturday Evening Post* and in every issue of the *Ladies Home Journal*. It inserted also a full-page advertisement each month in the following fan magazines: *Photoplay*, *Motion Picture Magazine*, *Motion Picture Classic*, *Picture Play*, and *Film Fun*. The company made a large appropriation for this advertising. It planned to continue its usual trade advertising.

During the first three or four months of the new program the company also advertised extensively in from 250 to 300 of the largest newspapers in the United States. It used large space (approximately 1,500 lines) but not full pages. These advertisements were institutional in nature and carried about the same

copy as the magazine advertisements. After the consumer advertising program was well established, the company dropped the use of institutional advertisements in the newspapers but continued using newspapers occasionally for special advertisements in connection with specific sales efforts.

During the first year of the new program the advertisements in the national magazines and in the newspapers were directed toward a stimulation of primary demand for the motion picture as such, and only incidentally toward the establishment of the company in the public mind as the leader in the industry as well as the producer of the best pictures. At that time a large number of people in the United States thought that the motion picture was a low type of entertainment comparable with the shooting galleries and the pool halls, and not in the class of the stage or vaudeville. The company, therefore, advertised the motion picture and the motion picture theater in an effort to persuade people to patronize this form of entertainment. Several advertisements stressed the community interests of the exhibitors and pictured them as well dressed and refined individuals greeting their patrons in their lobbies after the show. The company made every effort to make its advertisements dignified and artistic in their arrangement. It spent a substantial amount of money in obtaining a series of illustrations by prominent artists. These were reproduced in some of the magazine advertisements. The advertisements appealed to the desire for entertainment and to the desire of many people to go out in the evening. They appealed to the desire for romance and excitement and the wish to observe youth and beauty. Although the executives realized that the motion picture was an effective educational agent, they carefully avoided any reference to that fact in their advertising. Their experience had informed them that people expected only entertainment from the theater and did not want to feel that they were being educated thereby. This type of advertising was continued for the entire first year.

Inasmuch as a majority of the readers of the fan magazines were already regular attendants at motion picture theaters, the company inserted in the fan magazines advertisements describing the pictures it was releasing and urging the readers to see those pictures because they were the best of the season. In such advertisements the company's trade-mark was always given prominence.

After trying for a year to stimulate primary demand through its advertisements in national magazines and newspapers, the company believed it had made some progress in popularizing the motion picture. Comments in advertising trade papers and statements made by exhibitors and by theater-goers confirmed this belief. The company continued the same type of advertising but combined with it, in increasing amount, advertising of specific pictures as illustrating the general impression of quality that it hoped had been built up around its own trade-mark and name. Less attention was directed to the stimulation of primary demand. Every advertisement stressed the company's trade name and made the assertion that the company's pictures were of a consistently high quality and that a program composed of the company's pictures was always a good program. The company adopted for use in its advertisements the slogan "Baldwin Pictures Best East or West."

The company supported its consumer advertising by advertisements to the exhibitors in trade papers, describing the consumer advertising program. These advertisements urged exhibitors to purchase the pictures which were advertised to the public by the producer. The advertisements suggested also that exhibitors take advantage of the company's advertising by referring to it in their own advertisements. During one year the company adopted the slogan "Known Before They're Shown" for use in some of its advertising to exhibitors. Every member of the salesforce was fully informed regarding the company's program of consumer advertising and made it an important part of his sales talk to exhibitors.

After this program of consumer advertising had been in operation several years the executives of the company were convinced that it was an effective means of selling the company's pictures to the public. One of the executives of the advertising agency had made a nation-wide trip every year or two to observe the results of the company's advertising. He questioned the company's salesmen, exhibitors, theater-goers, and business men about the advertising. He was convinced that the consumer advertising was effective. Many letters were received by the company from exhibitors and theater-goers which indicated that the program was effective. Periodically in various parts of the United States the company had tested the results of the adver-

tising by sending callers from door to door to question householders. In most cases these tests indicated a preference for the company's pictures and a favorable inpression of the company's advertising. Many of the company's salesmen experienced a lessening of sales resistance on the part of exhibitors. When sales resistance was especially strong, a salesman frequently obtained an exhibitor's permission to pass out cards to his patrons asking what company's pictures they preferred. On the card all important producers were listed alphabetically. The results almost invariably were in favor of the company's pictures. Although the use of the cards was not intended primarily as a test, it constituted one of the best tests available to the company.

The company continued its program of consumer advertising without a break. From time to time it made changes in type of copy and in media used. Up to 1928 only one other company, the Universal Pictures Corporation, had adopted any regular program of consumer advertising.

Commentary: This case illustrates one of the earliest attempts at direct consumer advertising on the part of motion picture distributors. The reasons why distributors had not undertaken direct consumer advertising are important. As pointed out in the case, they were based upon two factors. The first was the difficulty of timing an advertisement with the showing of a picture in a particular theater. The second was a question as to the effectiveness with which the trade name of a company could be made influential with the public. In more recent years, direct consumer advertising has become very much more general. There are several reasons for this. The entrance of producer-distributors themselves into the exhibition field was doubtless a factor. The depressed condition of the industry in 1926 and 1927 may have suggested the necessity of undertaking something new. A belief in the inadequacy of exhibitor effort probably played its part. It will be noted that under the Standard Exhibition Contract the exhibitor agreed to buy his advertising from the distributor, because of a conviction that better results would be obtained in this way. Other manufacturers had successfully appealed directly to consumers in selling their products and their experience suggested to the motion picture companies that they might do likewise. Banking firms and electrical companies had become interested in the motion picture industry and possibly were a contributing factor in bringing about the new policy. Finally, when one large producer-distributor undertook direct consumer advertising on a large scale, others felt more or less compelled to follow his example in self-defense.

Direct consumer advertising of motion pictures is unquestionably valuable, and in most cases well repays for the expenditure. Granting the value of an excellent title for a picture and the unfortunate results which follow from an unwise selection of a title, it is still true that the public has become very sceptical as to the accuracy with which titles describe pictures. A common belief prevails in the industry that the director's name has value in advertising. Except in very rare cases this is probably not true. The name of a star or the description of the plot doubtless has greater weight. This information, combined in a general announcement of the pictures produced by a given company, may be presented in such a way as to cause the public to look forward to seeing those pictures, and does, therefore, have real value.

Consumer advertising is also a tremendous selling argument in dealing with an exhibitor. Statements in the advertisement such as "Ask your local exhibitor when this picture is coming" are intended to bring pressure to bear upon the exhibitor to buy. Undoubtedly, the fact that consumers have been informed regarding certain pictures does reduce the sales resistance both for the distributor's salesmen and subsequently for the exhibitor.

The attempt on the part of the Baldwin Pictures Corporation to stimulate primary demand shows a proper understanding of buying motives. The need for such stimulus was very real. It may be questioned whether a year was a sufficient amount of time for its accomplishment. The company probably continued this type of appeal in some form long after the principal emphasis had been shifted to Baldwin pictures specifically. One important distributor at a considerably later date than is represented by this case undertook to stimulate primary demand in an important church publication but aroused so much opposition that the editors were compelled to request the company to withdraw its account. Even though competitors were benefited, the Baldwin Pictures Corporation adopted a far-sighted policy in attempting to stimulate primary demand. Announcements in fan magazines could remain selective in motive as directing attention to Baldwin pictures at all times.

Assuming that people are interested in motion pictures as such, it is necessary to determine the basis upon which to interest patrons in specific pictures. Contrary to a common belief, it is to be seriously doubted whether the trade name of a distributor carries much weight with the ordinary patron. Even the names of outstanding stars or stories lose some significance when exhibition occurs a substantial interval of time after the appearance of the advertisement. It is probable that general distributor advertising may well be confined to emphasizing coming events of outstanding significance in the hope

that local advertising may later be effective in causing a recurrence of an interest aroused earlier.

There is an interesting question as to whether national advertising might not well stress the names of distributor-controlled theaters from time to time. Emphasis could be placed upon the convenience of such theaters, upon the courtesy displayed, comfortable seats, good ventilation, etc. This would also have an advantage in that it would, in part, avoid the problem of attempting to time announcements with exhibition. Furthermore, in all theaters today pictures of various producers have to be shown. It may be urged that independent exhibitors might object to such advertising. While this argument has weight, it would seem to be significant only where independent exhibitors actually compete with distributor-owned theaters. In such cases the chain theater wants the business anyway and cannot expect to make sales to independent exhibitors. Where such competition does not exist the independent exhibitor has no ground for complaint. Up to the present the names of the theaters have been presented to the public through local advertising. This would always be necessary, but it would be an interesting experiment for a distributor owning nation-wide chains to attempt occasionally to stress the names of his theaters.

November, 1929 H. T. L.

Warner Bros. Pictures, Inc.

PRODUCER AND DISTRIBUTOR—MOTION PICTURES

Advertising—*Trailers and Screen Announcement Service Instituted by Producer.* A producer and distributor of motion pictures decided to organize as a division of its advertising department a complete trailer and screen announcement service for the pictures which it produced, instead of depending upon the private producers of trailers for this auxiliary service. Because sound pictures had brought about the general adoption of percentage pricing and because this company had recently acquired a chain of theaters, it was more directly interested in the effectiveness of the trailer service than it had formerly been.

(1929)

In 1929, Warner Bros. Pictures, Inc., an outstanding producer-distributor and exhibitor of motion pictures, instituted a complete trailer and screen announcement service for its product. At that time it was customary for producers to delegate this function to companies specializing in that particular field of advertising. The introduction of sound pictures, acquisition by the company of a large number of theaters, and the general adoption of percentage price policies by the motion picture industry were the principal reasons why Warner Bros. Pictures, Inc., decided to inaugurate its own trailer service.

Motion picture trailers were short reels of usually not more than 800 feet of film each, their purpose being to advertise the future exhibition of certain feature pictures. Trailers usually were shown in theaters one week or more in advance of the exhibition in those theaters of the feature pictures they represented. Trailers varied in type, though as a rule they were short descriptive skits or a series of scenes adapted from a given photoplay. Some trailers included titles and subtitles, others animations, and still others a combination of both. Animations, defined with reference to their use in conjunction with motion picture trailers and screen announcements, consisted of titles, subtitles, and other printed material which had been superimposed on a background of caricatures, still and action pictures, and similar photographic effects.

The use of the trailer as a widely used medium for advertising motion pictures dated from 1920. Prior to that time exhibitors were accustomed to announce their coming attractions on slides known to the industry as "stills." There existed in 1920 a few trailers, but these generally were of an inferior quality and as a result were ineffective. They were adapted by motion picture producers from the original negatives and were distributed by the producers without charge to the theaters booked to exhibit the pictures from which they were taken. Foreseeing the possibilities offered in this field, several companies were organized to produce and to sell motion picture trailers.

In the period following 1920, trailers became universally recognized as a valuable adjunct to motion picture advertising and, as a result, the more progressive trailer companies developed rapidly. Their organizations comprised men thoroughly experienced in motion picture production, distribution, exploitation, and advertising. While an integral part of the motion picture industry, trailer companies functioned primarily as agencies, whose scope of activity was confined to a specific form of advertising for this particular industry. The advent of sound opened many possibilities for the development of trailers.

In 1929, trailer companies, in general, were of two types—local and national. There were over 35 local companies, which usually confined their activities to screen announcements. There were but two national companies of consequence, the Film Announcement Corporation, which specialized in still, portrait, and trick photography trailer reproduction; and the Clarion Trailer Corporation, which, through arrangement with most of the well known producers, held exclusive rights to production and distribution of trailers containing actual scenes from each feature picture released by those companies. Since motion picture producers used several cameras in filming a motion picture, there was always some unused footage from which a trailer company could select negative for its use. As compensation for granting trailer rights, motion picture producers usually received minimum royalties based on negative film footage. The gross sales of the Clarion Trailer Corporation in 1928 approximated $2,000,000, which represented an increase of about 30% over the gross sales of 1927.

The production of trailers adapted from feature picture negatives centered in New York City. Since a large majority

of motion picture studios were located in southern California, the Clarion Trailer Corporation found it necessary to maintain a staff of experts in Hollywood to advise producers on the selection of scenes in which the interest factor was such as to make them readily adaptable for trailer purposes. The selected scenes usually approximated 800 feet of negative film for each picture. This film was forwarded to New York for printing and trial projection. The second step in the production process involved further editing until the length was so appreciably reduced that only the climactic scenes remained. Animations, titles, and subtitles were then added and a trial print was projected for final inspection before the article was pronounced ready for distribution. When color sequences were inserted in trailers, the development and printing process was performed by companies that specialized in natural color photography. The advent of sound pictures further complicated the production problems of trailer companies. Expenses were increased considerably because of the necessity of leasing sound equipment, paying the royalties thereon, and securing the services of experts in sound reproduction, transposition, and duplication.

In addition to the regular service, national trailer companies sold also several specialties. Holiday trailers, for example, provided Christmas and New Year's greetings. Day combinations comprised every known announcement, such as, "Entire Week Commencing Saturday," "Commencing Sunday," "Added Attractions," "One Day Only," "Sunday," and numerous similar headings. Day combinations, although sold separately, became an integral part of the trailer service with which they were provided.

National trailer companies distributed their product through exchanges located in New York, Chicago, and Los Angeles. Sales offices were maintained in some of the principal key centers throughout the United States. Mail-order selling was customary where exhibitors were small and were located at great distances from the regularly travelled routes. In general, however, the personal efforts of large salesforces were required to produce satisfactory results.

The trailer service contracts to exhibitors used by the Clarion Trailer Corporation were usually for one year's duration. Prices for the synchronized product ranged from $7.50 to $20 per trailer.

The highest price was charged when a theater changed its program once a week; the lowest, when three or more changes were made every week. Silent trailer prices ranged between $5 and $25 a month, the amount being dependent upon the material contents of the trailers, the number of trailers required, and their age as based on the picture producer's announced date of release. In general, the lowest prices were paid by subsequent-run theaters. Although the Clarion Trailer Corporation made many sales to chain companies, it sold to each theater as a unit. Chain theaters were not permitted to transfer trailers within their organizations.

Concomitant with the making of a contract between the Clarion Trailer Corporation and an exhibitor, the salesman making the sale endeavored to secure a complete list of the names of the pictures that the exhibitor had booked, including for each picture its distributor, the company releasing it, the stars playing in it, and the booking dates for it if known. In most instances, however, it was impossible for the exhibitor to know every playing date far in advance of exhibition. The company, therefore, supplied the exhibitor with booking sheets and instructed him to send in his datings as soon as he knew them, requesting him to take precaution to fill in the exact starting and closing dates of each picture and the name of the company releasing it. The company further instructed him to indicate any changes in booking dates previously submitted and to note any substitutions.

Further to facilitate trailer bookings, the Clarion Trailer Corporation each week printed lists of current trailer releases and those in preparation, and sent one to each exhibitor. These announcements listed the titles of the pictures, with the names of the producers, and designated, by code, the type of synchronization; that is, whether the trailer consisted of "talk and dialogue; talking announcements; sound effects and music; talk, sound and music; singing and music; talk, singing and music; or music." Upon receipt of a list of trailers, the exhibitor checked his list of feature pictures which he had recently dated in, against the list of available trailers, and in this way determined the booking date for each trailer. He then sent booking sheets designating his requirements to the nearest exchange of the Clarion Trailer Corporation.

In the period preceding the introduction of synchronism, Warner Bros. Pictures, Inc., for several reasons, was not concerned

with the establishment of a trailer department. In the first place, animations and similar expensive photographic effects predominated in the most effective silent trailers. In this particular field an independent trailer company operating on a volume basis was in a position to effect large production economies. Secondly, since prior to 1928 Warner Bros. Pictures, Inc., controlled only a few theaters, the company's distribution was confined primarily to independent theater operators who, because of producers' competition for their business, were in an exceptionally strong bargaining position. Previous experience with this situation had taught producers to refrain from engaging in the sale of accessory articles, such as trailers, which exhibitors might seek to acquire without charge. Finally, since flat rental price policies were the customary practice in the industry, it was not incumbent upon the producer-distributor to provide a form of advertising, the benefits of which accrued directly to the exhibitor.

During 1927 and 1928, when the motion picture industry developed rapidly, Warner Bros. Pictures, Inc., rose from a comparatively minor position to one of preeminent importance. As one of the results of the numerous changes that had taken place, the company was convinced that the relegation of its trailer service to an outside company was not in keeping with sound business practice. It decided, therefore, to establish a company trailer service for Warner pictures. Three factors, all closely interrelated, were particularly important in causing this decision. These were: the advent of sound, the company's acquisition of a number of theaters, and the general adoption of percentage pricing in the industry.

The introduction of sound motion pictures necessitated numerous changes in the fundamental character of trailers. Whereas formerly the most effective products consisted of series of climactic scenes, usually interspersed with an equal or even greater number of caricatures, animations, and titles, the synchronized trailers, in a large measure, emphasized dialogue and music. Furthermore, the use of a trailer skit participated in by members of the cast appearing in the respective feature pictures was believed to provide, in many cases, a more effective advertising medium than a trailer comprised only of a group of scenes taken from that picture.

Trailer companies, for several reasons, were not equipped to produce this type of dialogue skit. The inaccessibility of the mem-

bers of the casts, the costs involved, and producers' contracts were obstacles of major importance. On the other hand, such barriers did not confront Warner Bros. Pictures, Inc. Furthermore, since to duplicate and reproduce sound, trailer companies required expenditures for equipment and the maintenance of an operating staff, the prices of their products to exhibitors were greatly increased. Warner Bros. Pictures, Inc., however, without additional expense could utilize the services of its regular equipment and staff of technicians, and thereby effect maximum economic efficiency, Warner Bros. Pictures, Inc., had a further advantage in that it could make full use of its Vitaphone sound recording process.

The acquisition by Warner Bros. Pictures, Inc., of about 400 first-class theaters was instrumental in the establishment of the company's trailer service. There were several conditions which made this service desirable. First, each of these theaters required comparatively large annual expenditures for trailers and sundry other screen announcements. The aggregate amount of these expenditures would in a large measure defray the cost of producing and distributing trailers for all Warner pictures. Therefore, to continue to purchase an auxiliary service which the company itself was well equipped to undertake was considered uneconomical. Secondly, Warner Bros. Pictures, Inc., wished to secure as effective advertising as possible for its pictures. Since trailers constituted one of the most important mediums of advertising, the company was interested principally in providing its theaters with trailers of excellent quality. By maintaining its own trailer service, it could provide a product of consistently high quality at costs which would be insignificant when compared with the results achieved. On the other hand, the production cost was of vital importance to companies whose source of income was derived solely from the sale of trailers and screen announcements. For this reason, definite limitations were placed on the material contents of the product of these companies.

The general acceptance of percentage film rental policies by the motion picture industry in 1928 and 1929 made possible the utmost cooperation between producer-distributors and exhibitors. Under the flat rental method the distributors naturally wanted the exhibitors to achieve success and often aided them by participating in the expenses of local advertising campaigns. However, they were not vitally interested in the purchase of trailers for their pictures,

and consequently the booking of trailers rested entirely with the exhibitors.

Percentage price policies, in that they provided for an equitable distribution of box office receipts between the distributor and exhibitor, changed the nature of this situation. As a result of this development the need for a company trailer service became apparent to Warner Bros. Pictures, Inc. In the first place, the company realized the advisability of showing not only a trailer for each Warner picture but one that could produce maximum results. The possibility of increased box office receipts was of much greater importance than the production costs of trailers or the prices paid for them by exhibitors. It was recognized, furthermore, that the exhibition of a complete Warner program on a percentage rental policy might warrant the free distribution of trailers to the theaters booking such programs. Obviously an independent trailer company would not fit into such a situation. For aforementioned reasons it would not be sound practice for Warner Bros. Pictures, Inc., to purchase trailers for exhibition by percentage accounts.

According to its decision Warner Bros. Pictures, Inc., organized, as a division of the advertising department, a department for the creation and production of trailers. Since members of the company's regular staff could be employed in such production, the personnel of this department was not large. Distribution was effected through the regular channels by the company's 35 exchanges without increasing their general operating expenses. Selling was conducted by the regular salesforce in conjunction with the sale of feature pictures. Trailer price policies varied in accordance with the contract for the feature picture which a trailer represented, and for other of the company's product. In general, however, trailers were distributed to exhibitors either for a flat rental price or without charge. Free service was granted to the larger theaters that exhibited a complete Warner program (not including newsreels) on a percentage arrangement. When fees were charged for trailers, the prices involved were much less than those charged by independent trailer companies. The company followed much the same policy in dealing with its own theaters as it did with the theaters of its competitors.

After several months' trial Warner Bros. Pictures, Inc., was satisfied with the results achieved by its trailer department.

The president believed that his company's 35 exchanges had provided a service that heretofore had not been possible in the distribution of trailers. Furthermore, because the company was in a position to effect maximum cooperation with exhibitors it was able to maintain its stock of trailer prints at a minimum.

COMMENTARY: There are two primary considerations involved in this case; one has to do with the value of trailers as advertising; the other relates to the best policy to pursue in the production and distribution of such trailers.

Trailers are essentially a form of advertising and must be judged as such. Their value is dependent, therefore, upon the interest which they can arouse in forthcoming exhibitions. As an advertising medium they possess certain real advantages. First, the trailers constitute a direct consumer appeal to a class of people easily influenced by such appeals; namely, those already disposed to attend motion picture theaters. This very fact, however, indicates a limitation of the influence of trailers; they obviously have not direct weight with those not already patrons. Secondly, the exhibition of trailers can be timed so as to yield the best possible results, since generally they are used only for pictures exhibited at a particular theater for specific dates. The individual theater, therefore, capitalizes to the utmost on the effort.[1] Finally, patrons cannot avoid submitting to the appeal, whereas printed advertising may not be read by any considerable number of people.

On the other hand, it must be said that many trailers are both misleading and ineffective. They are ineffective because they frequently are made up merely of sequences clipped from a feature picture, and the sequences are not always chosen with real appreciation of the most effective interest factors. They are often decidedly misleading in that they do not fairly represent the real character of the play. In other words, though the trailer may be actually composed of sequences from a picture, the picture itself is not fairly sampled, but is actually misrepresented by the trailer. It may also be noted that in some cases the trailer itself is wholly silent, though representing a sound picture. Hence the audience is given no opportunity to judge the quality of the voices or the effectiveness of the dialogue and the supplementary sound effects.

In general, it is believed that a more effective presentation is possible when a separate skit is specifically written and filmed for each particular picture than where a series of isolated scenes are offered. Not only can the appeal be more pointed and hence more effective,

[1] Cf. Baldwin Pictures Corporation, page 435

but a fairer summary of the picture can be given. Moreover, and of paramount importance, a real interest in the trailer itself can be developed. When actual entertainment value is given to the picture itself, closer attention is devoted to it by the audience. Instead, therefore, of merely being tolerated, it becomes a real part of the program. Consequently, the audience is better pleased with the performance it is attending, and it is more likely to look forward with keen anticipation to the coming attractions to which its attention has been directed.

The second major consideration relates to the policy of Warner Bros. Pictures, Inc., in undertaking to produce and distribute its own trailers. There are several potent arguments against such a policy. First, it appears that the Clarion Trailer Corporation had had long experience in the trailer business. Secondly, the Clarion Trailer Corporation had apparently been successful, as is indicated both by its steady growth and by the number of substantial accounts it had. Again, a general motion picture producer might fail to give the same attention to the quality and service of a trailer business as would the Clarion Trailer Corporation, whose entire experience and income was involved with this one type of product. Finally, the case indicates that, at least earlier in the development of the industry, motion picture companies had produced their own trailers and had given up the practice, apparently because of increasing pressure from exhibitors who sought to obtain trailer service gratis. All these arguments have real weight.

For such companies as Warner Bros. Pictures, Inc., however, it does not appear that these conditions should prevail. For one thing, there was no inherent reason why the advertising department of this company should not give just as serious and as intelligent attention to the production of effective trailers as should any independent company. In fact, since the scenarists, casts, and directors were all under the company's immediate control, trailers of really superior quality should be more probable, particularly if fashioned along the lines indicated in this commentary. Again, the cost of distribution should be less. Warner Bros. Pictures, Inc., had a completely organized and functioning distributive organization, including distribution centers, salesmen, and bookers, presumably rendering satisfactory service to the exhibitor. With the Clarion Trailer Corporation the entire organization functioned from 3 exchanges, whereas Warner Bros. Pictures, Inc., had 35. It must be recalled, moreover, that with the Clarion Trailer Corporation the trailer business was compelled to bear the entire cost, whereas with Warner Bros. Pictures, Inc., the cost could be borne jointly by trailers and other films. This fact is of significance even though the trailer business of the Clarion Trailer Corporation was substantially larger in total than the volume of the trailer business of

Warner Bros. Pictures, Inc., and is borne out by the statement in the case to the effect that the rental charges for Warner trailers were substantially less than for Clarion trailers.

The pressure for free trailer service was less severe in 1929 than it had been originally. In the theaters owned by Warner Bros. Pictures, Inc., no question would arise, obviously. In fact, since the Clarion Trailer Corporation, as an individual concern, had charged Warner Bros. Pictures, Inc., for the trailers of its own pictures, some actual saving might result. With other theaters, two conditions had changed since the more general use of percentage pricing had developed. In some cases, provision had been made for free service on all trailers to exhibitors who, buying on a percentage arrangement, agreed also to use the entire production of that producer. There was apparently a trend in the same direction on all trailers for pictures sold on a percentage basis. Producers were adopting this policy on the theory that such trailers furnished real advertising for the pictures in which both distributor and exhibitor were financially interested. From the distributor's viewpoint, moreover, the policy offered an opportunity for bargaining that he was not loath to utilize. Such opportunities did not exist when the trailers were sold by individual trailer companies.

April, 1930 H. T. L.

France

CINEMA CONTROL COMMISSION

Import Regulation—*Policies to Protect Domestic Producers.* Beginning in 1927, the French government, in an effort to protect the native motion picture industry, began to place quota restrictions upon the importation of foreign films. In 1928, a cinema control commission created by the government made a recommendation, later adopted in a film decree, that a native producer selling a French film in a film-producing country would be authorized to release in France seven foreign films. A more stringent regulation recommended in March, 1929, aroused dissatisfaction, not only on the part of foreign producers, particularly those of the United States, but also on the part of French exhibitors who wished to show American films. Negotiations between representatives of the French government and of American producers finally led to settlement of the controversy by an agreement to return to the status quo of the seven-to-one quota.

(1927–1929)

The first attempt on the part of the French government to protect the native motion picture industry by quota restrictions on imports was made early in 1927, when a film decree placed into effect a "contingent" plan which provided import permits on the basis of nine foreign films for each domestic production. The plan was acceptable to the French producers but met with much remonstrance from the distributors and exhibitors. On February 19, 1928, a cinema control commission was created as an advisory committee to the Minister of Public Instruction and Fine Arts. Its recommendations, adopted in a new film decree of May 9, 1928, provided, in principle, that a native producer who could prove the sale of a French film in a film-producing country would receive authorization to release in France seven foreign films. Much dissatisfaction with this provision arose, and a series of problems and decisions followed, in which United States motion picture exporters were substantially involved.

In September, 1929, an agreement between representatives of the motion picture industries of France and America ended a controversy over quota restrictions on the importation of Ameri-

can films into France which had existed since the recommendation in March of new and more stringent regulations. The new agreement was, in effect, a continuation for a period of two years of previously existing protective regulations; it was hoped that during this period a definite agreement based upon a more satisfactory method of protection might be formulated and adopted by the industries of the two countries. The necessity for an arrangement that would permit further development of the French market for motion pictures, together with the influence of any decision upon the quota restrictions in other European countries, gave particular importance to a satisfactory solution of the protective problem.

As shown in Exhibit 1, American participation in the French market had declined steadily since 1924, when American producers supplied nearly 85% of the country's requirements for feature films.

Exhibit 1

Feature Film Market in France, 1924–1928*

	Total No. of Films Censored	U. S. Films	U. S. Percentage Share of Market	French Films	French Producers' Share of Market
1924	693	589	84.9%	68	9.7%
1925	704	577	80.9	73	10.3
1926	565	444	78.6	55	9.7
1927	581	368	63.3	74	12.5
1928	583	313	53.7	94	16.1

* Source: Bureau of Foreign and Domestic Commerce, *Trade Information Bulletin No.* 617, 1929. See page 465 for data on 1929 distribution.

In quantity of film footage France ranked fourth among European markets and ninth among world markets for American motion pictures in 1928. In amount of revenue, France ranked high. The largest United States distributors obtained at that time from 25% to 40% of their total revenue from foreign distribution, of which from 1% to 2% was secured in France. Import and export statistics are available only in film footage, positive or negative. It should be noted that neither number of pictures nor film footage constituted an accurate measure of the relative share in the market, as pictures varied in revenue-producing value. It was generally conceded that American pictures obtained a higher average gross revenue than foreign pictures in

the same market. At the same time, the decrease in number of pictures distributed clearly indicated a declining share in the market.

The film decree of May 9, 1928, provided that authorization to release foreign films in France be in the form of import permits which became property rights to be disposed of as the owner saw fit, subject, of course, to the limitations of the decree. A provision enforcing export of the French productions was abandoned after long negotiations between the French and American industries, and the seven import visas were supplemented by two additional ones when the French film was exported. Each distributing company was also permitted, during 1928, the important concession of free visas up to 60% of the total foreign product which it brought into France during 1927. The French Film Decree of May, 1928, was as follows:

French Film Decree[1]

(Adopted May 9, 1928)

Article I. The commission decides that the motion picture year for which the present regulations are established will run from October 1 to September 30 of the following year.

The following provisions are equally applicable during the period from March 1 to September 30, 1928.

Article II. The commission decides that all French films (provided that they are not in any way contrary to good morals or the public order) will receive the visa of the Film Control Commission required for their release in France, her colonies, or protectorates. This visa does not prejudice in any way the classification of these films in the first or second category, nor the rights they may have to protection.

Article III. Every film produced by a firm entirely French is considered a French film of the first category. The author of the scenario must be French, the technical director, the director and his assistant or assistants, and the cameramen must all be French; the interior scenes must be made exclusively in studios owned by French firms and situated on French territory. The leading roles may include foreign artists, but the proportion of these artists must not be more than 25%. In any case, and no matter how many leading roles there are, the right to one foreign artist is recognized, even if the number of leading roles is not divisible by four. On the request of a producer the commission will have the power to decide to permit in the leading roles a higher percentage of foreign artists than that provided for in

[1] Bureau of Foreign and Domestic Commerce, *Trade Information Bulletin No. 617.*

the first resolution if the necessities for the production of the work require it.

Every film produced as above in which each item, including the direction, comprises at least 50% of French elements is considered as a French film of the second category.

Article IV. Each film produced in France which will be neither of the first nor of the second category can freely circulate in France, her colonies, and protectorates, but it will not be entitled to the advantages provided for by the decree.

Article V. The commission, desiring to protect solely the films which will be worthy of and honor France, declares that all the films protected must be important productions, produced with a view to a wide distribution at home as well as for exportation, and not simply to obtain the advantages of a protection.

Article VI. Taking into consideration the exceptionally large number of films (520 films) recently visaed by the Control Commission and to be released during the coming season, the commission fixes at 500 the number of foreign films which can be released in France during the period from March 1, 1928, to September 30, 1929.

This number may be modified by the commission for the purpose of assuring at any time the number of films required by French exhibitors.

Article VII. Producers who give a satisfactory proof of the production of a French film of the first category will receive from the commission the authorization to release in France, her colonies or protectorates, seven foreign films.

Persons who give a satisfactory proof of the exploitation of a French film in one of the foreign countries, known as film-producing countries, will receive from the commission the authorization to release in France two foreign films. This number cannot be exceeded, whatever the number of buying countries may be. The producers can divide among various countries the number of import licenses to which they are entitled.

French films of the second category will have the right to 50% of the above advantages.

Article VIII. The measures taken for the protection of French films will not apply to short foreign films of which the total length does not exceed 600 meters, including titles.

Article IX. In order to be shown on the screens of France, her colonies and protectorates, every foreign film must, to obtain the visa of the French censor, be presented in the integral and original version in which it has been shown on the screens of its country of origin, with exactly the same titles, of which a French translation, guaranteed to be literal, will be supplied along with the film to be examined.

Article X. The commission reserves the right to refuse to issue censor cards in the future to any person, producer, distributor, or company, even an intermediary, who has produced, distributed, or done business with, in foreign countries, films which might reflect on the fair name of France.

Moreover, it has been decided that the authorization to bring in for 1928, without any formality, 40% of the number of foreign films imported in the year 1927 is changed and provides for 60% of such free visas.

And, finally, the French films released since October last will be entitled, by a retroactive effect, to seven licenses instead of nine.

While the 1928 decree was to remain in effect until September 1, 1929, the exhaustion of the allotment of import permits and the start of a new production season caused the commission to consider, on March 1, 1929, the adoption of new regulations. Under new regulations recommended by the commission, to become effective as of September 1, 1929, each foreign distributor would be permitted to bring in films on free visas in number not to exceed 20% of his total 1928 distribution, with a minimum of four films. Additional importation required an import visa or so-called permit. Upon the basis of an estimated French production of 80 feature films for 1928, it was recommended that each French feature production entitle the producer to three import permits. Outstanding licenses would be necessarily exchanged for new licenses. The commission estimated that 595 features would come into the market, 80 of which would be French, 240 imported with new licenses, 75 under old licenses to be exchanged, and 200 under free importation.[2]

It was the opinion of Major F. L. Herron, manager of the foreign department of the Motion Picture Producers and Distributors of America, Incorporated, and spokesman for the foreign departments of the individual film companies, that American companies could not afford to maintain organizations in France under the conditions imposed by the recommended decree.

American companies announced their intention to contract for no new business upon the expiration of existing contracts; trade showings were cancelled pending the outcome of the proposed legislation. A threat to retire from the market was considered inadvisable because of the adverse sentiment that would result from taking action on a situation that was not fully developed.

With American companies planning to suspend activities in France, the State Department of the United States was prevailed upon to make representations to the governments which had

[2] Bureau of Foreign and Domestic Commerce, *Trade Information Bulletin No.* 617, 1929.

adopted, or which contemplated adopting, restrictive film regulations. These were the governments of France, Germany, Czechoslovakia, Austria, Hungary, Italy, and Spain. No note was sent to Great Britain. Although Great Britain had set up a quota law which was unfavorable to American industry, it was already in operation and was designed to operate for a number of years. The notes pointed out the importance which the United States government attached to the matter. In previous negotiations on import restrictions, the State Department had adopted the policy of leaving to the industry the problem of effecting more favorable terms in the exportation of its products. American embassies and legations in the countries to which representations were sent were instructed to call upon the ministers for foreign affairs and to discuss the existing situation affecting the importation and distribution of American motion pictures. The text of the note sent was as follows:[3]

The government of the United States has for some time observed legislative and administrative developments in foreign countries as they affect the American motion picture industry, which has become one of the leading industries of the United States. There have been persistent and substantial demands for American pictures on the part of foreign exhibitors, and this has created an extensive foreign market for this American product.

The building up of this market has involved an investment of large proportions, and it is felt that this investment is jeopardized by certain governmental measures arbitrarily restricting the distribution of American films. The regulations are often so subject to arbitrary and unpredictable change that they introduce an element of commercial uncertainty and industrial instability to which American motion picture producers and distributors find it difficult or impossible to adjust themselves.

This government does not intend to question such measures as may be imposed by any country for the purpose of protecting through censorship the national traditions of public morals, but this government has adopted no restrictive regulations similar in any way to those enforced in certain foreign countries. It believes firmly that the interests of the motion picture industry in all countries are best promoted by the freest possible interchange of films based solely on the quality of the product.

The department has observed with sympathetic interest the increasing number of films which have entered the United States in recent years on a free competitive basis and that the American motion picture industry has always shown a willingness to collaborate in the most

[3] As reported in the *Film Daily*, April 19, 1929.

friendly way with representatives of the industry for the unrestricted importation of films.

It is, therefore, the earnest hope of the government of the United States that the governments to whom it is making representations will have appropriate steps taken to avoid the serious injury to which American motion picture producers are subject by restrictive regulations, and which it feels must eventually prove a hindrance to international development of the motion picture industry.

American interests desired the abandonment of all contingent and quota regulations, particularly when the purpose of such regulations was to subsidize motion picture producers. American representatives pointed out that their organizations had expended large sums in building up a business in France. It was estimated that the gross receipts from the distribution of American pictures in France approximated from 1% to 2% of the total foreign revenue of the larger American companies. In addition to the loss of sales it was estimated that a loss in theater and real estate investments of approximately $5,000,000 would be suffered by three of the largest companies if new regulations made it unprofitable to maintain distribution in France.

The French motion picture industry was not in complete accord as to the wisdom of more stringent import restrictions. Within the Chambre Syndicale de la Cinematographie Francaise (French Motion Picture Chamber of Commerce), there were separate organizations of exhibitors, distributors, and producers, whose interests were of such a conflicting nature that a divergence of effort was apparent during the consideration of the film decree by the government.

French exhibitors, particularly in the provinces, expressed sympathy with the American position in the controversy. American pictures were relatively popular; it was reported that 63% of the total number of play dates in French theaters were for American pictures.[4] At an exhibitors' convention, many argued that a quota plan might be of assistance to the small number of French producers but that it was of no benefit to the rank and file of theater operators. A protest in the form of a petition signed by 2,500 exhibitors was prepared which declared that the exclusion of American pictures would cause the theaters and the government to suffer heavy financial loss, and deplored the patriotic issue of a

[4] *Film Daily Year Book*, 1929, p. 1021.

quota discussion which failed to consider the interests of the exhibitor as a citizen.[5]

Several French distributors maintained that the preference for American pictures was founded on the low price quoted by American distributing companies; that the large number of theaters in the United States and Canada gave these companies so much profit that they might regard the European market as "velvet." Quota laws were necessary, they argued, to enable the French distributor to sell his product at a profit in competition.

The French producer was primarily interested in securing substantial financial assistance. The existing plan permitted the sale of permits which, in effect, constituted a subsidy of production. Dissatisfaction with the seven-to-one quota rested largely in the amount of the subsidy. The unfavorable attitude of the leader of the French producers toward the existing plan was said to have arisen from what that individual claimed to be the "failure on the part of American interests to carry out the promise of their representative during the 1928 negotiations." This spokesman of the French producing interests, M. Jean Sapene, at that time editor of *Le Matin*, and a producer of motion pictures, stated that "the representative had promised to look into the possibilities of the distribution of French pictures in the United States and to do something to further a showing of foreign material." The facts were that a number of French productions had been taken for distribution in the United States by American companies. Most of these attempts at goodwill netted losses for their distributors. To cite but one instance, that of "Les Miserables," the picture arrived in this country in an edition of 22 reels. It required eight months of the most difficult and expensive efforts to rework and remold this product of French studios into shape suitable for American audiences.

French press comment, apparently rendered timorous by the violence of Sapene's attacks on the American industry in his paper *Le Matin*, became obviously partisan. At first the daily newspapers printed long articles denouncing "American boycott," "lockout," and "attempt to force American films on Europe." The word "bluff" also appeared frequently in newspaper comment. Later, some of the newspapers shifted to a satirical attitude.

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[5] As reported in *Variety*, May 1, 1929.

Comoedia, a French theatrical paper, went so far as to base an attack on the grounds that it was impertinence for the American Embassy to release statements to the press and to take part in trade discussions when there was no American ambassador appointed. The action of the Department of State in transmitting its note to the French government (among other European governments) on the subject of quota discrimination was criticized as undiplomatic, some editors referring to it as "blunt dollar diplomacy." The Motion Picture Producers and Distributors of America, Incorporated, and the American film industry were violently attacked and a demand was made for the expulsion from France of the representative of American motion picture interests.

The *Courrier Cinematographique*, an important trade publication, and *L'Ami du Peuple*, Coty's new daily, however, violently denounced from the beginning all contingent and quota regulations, arguing that no product could be forced upon the public. They urged that quality competition was the only way for France to progress in picture production, as the world's markets would always be open to good pictures.

During a series of joint conferences arranged by the American Commercial Attache at Paris between representatives of the French and American industries and the Cinema Control Commission before the Undersecretary of State for Fine Arts, American representatives urged the substitution of a tariff on film imports for the quota restrictions. It was suggested that a part of the proceeds from such a tariff on each foreign picture entering France might go toward the tax budget, thereby reducing the burden of the theaters, and the balance be doled out to French producers. It was estimated that a customs tax averaging $400 on each picture imported would be effective. A high protective tariff similar to that on other products was held to be consistent. While the suggested arrangement was satisfactory to the interests of the French industry, the French government withheld its approval.

Two proposals were advanced by the French government. The first was a compromise to a four-for-one quota, and the second provided for the prohibition of blind and block booking and a limitation of imports to 515 films a year. A refusal on the part of the American representatives to accede to either proposal led to settlement of the controversy, in September, 1929, by an

agreement to return to the status quo of the previous period, the seven-to-one quota. The following cable describing the agreement was received by the Motion Picture Producers and Distributors of America, Incorporated, on September 20, 1929:

> In the Office of Andre Francois Poncet, Undersecretary of State for Public Instruction and Fine Arts, and in his presence, Charles Delac, president of the French Motion Picture Chamber of Commerce, and Harold L. Smith, delegate of the American Motion Picture Industry (Motion Picture Producers and Distributors of America, Incorporated), have signed the following agreement, which they have discussed and drawn up in common accord, which wording is the result of the discussions which have been held for several months.
>
> Recognition on the part of both that a new element which was considered unimportant a few months ago, the sound and talking film, has changed absolutely the aspect of the world motion picture market.
>
> The contracting parties, not having been able to come to a definite agreement on any of the methods of protection existing or contemplated decide:
>
> To request the Cinema Control Commission to maintain the status quo (that is to say, the regulations and transitory measures adopted by the Cinema Control Commission on May 9, 1928)[6] which actually govern the distribution of foreign films, silent as well as sound and talking, in France, for a period of one year until October first, 1930. During this period which actually appears sufficient, and which will be prolonged for another period of one year, until October first, 1931, if an arrangement is not reached between the contracting parties before May first, 1930, the contracting parties will draw up, in the most friendly and amiable spirit, and notably on the French side the French Motion Picture Chamber of Commerce and the Cinema Control Commission will recommend to their Government a regulation based on a method of protection different from the present[7] principle, which, while safeguarding the general interests of the world cinema in France, will assure the necessary protection to the French motion picture industry.
>
> As soon as the Cinema Control Commission and the competent Ministry will have approved what precedes, the commercial relations between the French and American motion picture industries will be resumed as in the past.

The agreement was approved and the distribution of American films in France was resumed.

The determination of a permanent and definite arrangement to become effective at the expiration of the temporary agreement

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[6] See copy of French Film Decree, page 456.

[7] The American representative held out for a considerable time on the wording at this point. American interests desired to incorporate the phrase "different from the quota principle," a concession which the French representative refused.

required a careful analysis of many factors in the situation, among which might be included: (1) the status of the French industry and the opportunity for the development of the French market; (2) the effect of the development of sound pictures; (3) the relative satisfaction given by the form of legislative restriction to the various interests; and (4) the possibility of international control. It should be realized that the factors discussed do not include those questions of public welfare that are inseparably linked to the economic aspects of the problem.

An examination of the status of the French industry shows that, in comparison to the United States and in relation to other leading film countries in Europe, France was considerably behind in the matter of modern motion picture exhibition. Of the 4,000 theaters[8] in France, most were privately owned and operated and few circuits or first-run theaters were available for effective exploitation of picture values. Less than 40% operated daily and only 900 had a capacity of 750 seats or over.[9] Only 5% or 6%[10] of the French public, as compared with 25% of the American public were regular patrons of the moving pictures. Total realty investment in theaters in 1927 was estimated at $30,000,000.

The reason for the undeveloped status of the exhibition phase of the industry was said to be the relatively exorbitant entertainment tax collected by the government. The total of state, municipal, and poor taxes was estimated at from 17% to 40% of the gross receipts in Parisian theaters and from 15% to 31% in all other theaters. Under the state tax, over 120,000,000 francs were collected in 1928, an increase of nearly 15,000,000 francs over similar taxes collected in 1927.

It would appear, therefore, that with capable leadership and a favorable attitude on the part of the government, progress might be expected in theater construction, exhibition policies, and profitable operation. Already, American companies had initiated improvements. A theater under American control successfully adopted in 1928 the policy of continous showings and another was the first to be wired for the projection of sound and dialogue films. No anti-American feeling was evident and the American film retained great popularity.

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[8] *Film Daily Year Book*, 1929.
[9] *Film Daily Year Book*, 1929.
[10] Bureau of Foreign and Domestic Commerce, *Trade Bulletin No.* 617, 1929.

The yearly consumption capacity of the French feature film market was estimated by the French Motion Picture Chamber of Commerce at 600 films. This permitted a double-feature program policy in many theaters. American interests considered this estimate to be too high. The number of feature films distributed in 1929 was only 437, possibly because of the suspension of business by American companies.[11] Exhibit 2 shows the apportionment of the market for 1929.

EXHIBIT 2

FEATURE FILM DISTRIBUTION IN FRANCE, 1929*

Source of Production	Number	Source of Production	Number
France	52	Denmark	3
Semi-France†	0	Sweden	1
United States	211	Poland	1
Germany	130	Czechoslovakia	1
Italy	3	Armenia	1
Great Britain	23	Miscellaneous	2
Russia	9	Total	437

* Source: *Cinematographie Francaise*, January, 1930.
† See Article III of Film Decree, page 456.

The production of motion pictures in France was stimulated by the protection afforded. Exhibit 3 shows the increase in the average cost of the productions.

EXHIBIT 3

PRODUCTION OF FRENCH FEATURE FILMS, 1924–1928

Year	Number of Feature Films	Approximate Cost per Film
1924	68	
1925	73	
1926	55	
1927	74	$30,000
1928	94	40,000

The number of companies engaged in production was greater than the number in the United States, many companies producing a single feature film and no company making more than 10 pictures during the year. The largest producers in the United States offered from 40 to 70 feature pictures each year. The average

[11] See page 455 of this case.

cost per film was considerably less than that of American companies, many of whose feature pictures were made at costs in excess of $500,000. The annual business of French producing companies in 1928 in the domestic and foreign markets was estimated at 90,000,000 francs.[12] Approximately 3,000 persons were employed in the production of films.

Fundamental contrasts with the industry in the United States were: the retarded stage in the development of motion picture distribution and exhibition; the lack of sufficient capital for large scale operations; a comparatively limited national market; a relatively less successful technique in producing pictures of popular appeal; and a closer relationship between the industry and the government, a relationship which was the result of a request for assistance from the government.

The introduction of sound pictures with dialogue had an important effect upon the relations between the motion picture industry of France and that of the United States. France was slow to adopt the production of the synchronized sound picture. The lack of domestic production of electrical reproducing equipment, the concentration of American equipment manufacturers upon the home market, and the six months' suspension of business during the negotiations over quota regulations were responsible perhaps for the tardy development. There were indications, however, that the talking film would become as popular in France as elsewhere.

The introduction of talking pictures complicated the problem of legislative restriction of imports, and emphasized a necessity for smoother working relations between the industries of the two countries. No French talking films of any consequence had been produced. Competitive conditions were on an entirely different basis from that before the introduction of sound.

While a measure of success might be obtained at first in the exhibition of English dialogue pictures, it was generally recognized that a long run program would require the use of French actors in productions especially adapted to French consumption. The possibility of arousing anti-American agitation might be increased by the addition of English dialogue. This possibility, in turn, would enhance the development of the nationalistic character

[12] *Film Daily Year Book*, 1929.

of motion picture production and exhibition, and would disturb the existing conditions of film production.

American producers were experimenting with a number of alternative plans in attempting to satisfy in part the requirements of European countries in the new type of motion picture. While the development of the talking picture presented grave problems to the American company desiring to produce films for international distribution, the same problems were intensified for the foreign producer. For the American distributor, a market of approximately 20,000 theaters in the United States and Canada, and, to a certain extent, similar markets in English-speaking countries, were available for initial exploitation. In addition to England, Australia and New Zealand were relatively important film markets; the United Kingdom rated in 1928, among foreign countries, as the largest quantity market for American films. The French producer, on the other hand, was immediately limited to a market of perhaps 5,000 theaters. Previously existing inequalities in competitive conditions between the United States and foreign producers would become even more strongly favorable to the American producer, particularly during the period when foreign countries would be dependent upon American product.

Satisfaction with the form of legislative restriction varied with the different interests in the French industry.

At the time of the announcement of the 1929 agreement, American film officials expressed the belief that the agreement presaged the end of the quota principle in legislative restrictions, not only in France but in other countries of Europe. During the negotiations preceding the return to the seven-to-one quota plan, it was evident that the French government had no intention of abandoning the quota principle for the proposed frontier import duty.

The objection on the part of the French government to any plan involving the import duty, no matter how stiff a duty might be accepted, might well rest in the precedent of subsidizing an industry from import revenue and the difficulty of determining a satisfactory distribution of such a subsidy in the trade. The indirect subsidy effected by the quota plan presented fewer difficulties in administration and in many ways permitted a greater control by the government of the operation of the industry. It was the belief of the officials of the Motion Picture Producers

and Distributors of America, Incorporated, that the French government would never grant a subsidy to the native motion picture industry. The governments of European countries as a rule were financially unable to provide a subsidy and were unwilling to do for one industry what could not be done for other industries.

The willingness of the French producer to accept a plan that did not involve reciprocal distribution of French films in the United States indicated the importance to the French producer of assistance in raising capital regardless of the source, and a recognition of the difficulties in the production of feature pictures that could compete effectively with American product in the United States. Any future plan of protection, therefore, would be satisfactory to the French producer in the degree to which it provided him with capital through the sale of permits and more facile distribution in the home market. The officials of the Motion Picture Producers and Distributors of America, Incorporated, were of the opinion that the failure of certain producing interests in France to obtain capital was the result of their unsatisfactory ventures in the past rather than any shortage of capital for worth while productions.

During the 1929 negotiations the interests of the French distributors and exhibitors were in conflict. Distributors were interested mainly in protection through limitation of the number of films imported, thus restricting the competition with domestic product. The exhibitor, on the other hand, required American product, not only to supply him with enough films to meet program needs but also, because of the popularity of American films, to satisfy public demand. The strength of the exhibitor's position was apparent in its influence toward the settlement of the dispute over 1929 restrictions.

The diverse interests of the French government and the individual activities in the industry constituted a weakness in negotiation which would be partially overcome by further integration, both vertically and horizontally, in the industry, providing a more attractive investment for capital, the weeding out of small "mushroom" producers and distributors, and a common interest in the exploitation of native product and in the welfare of the industry. Under such conditions, less protection would be required and more power would exist to obtain the protection

deemed necessary. As a result of the negotiations and the resulting agreement, the leadership of the French industry passed into the hands of the president of the Motion Picture Chamber of Commerce, a representative with a more friendly appreciation of American interests in the market than was held by the former leader. The attitude of the contemporary Undersecretary of State for Public Instruction and Fine Arts, was also considered by the American association to be friendly.

A desire for protection of native industry in European film producing countries other than France and for restrictions on the importation of American films in all countries had provided an incentive for the development of an international concentration of economic policy. The leaders of the industry in Europe had recognized an inability to meet American competition and the necessity of finding a European sales market of sufficient magnitude for European production.

> Practical proposals toward the formation of a "Film Europe" were made as early as 1926 at the first International Film Congress, when the Central Distributors Association strongly advised the creation of an international economic film bureau. The task of the proposed bureau would have been to prepare the necessary basis for such a joint activity and to collect and disseminate statistical information on the entire film industry. The necessity of creating such an international bureau, limited by the requirements of exhibitors, was also pointed out by the French representatives at the International Exhibitors' Congress which was held in August, 1928, in Berlin.[13]

Success in the formation of an international control over European film companies would mean a serious challenge to the American position in the European market. In 1928, Germany, Great Britain, and France produced 221, 95, and 94 feature films respectively, a total of 410 films costing $22,360,000. Other countries produced as follows: Austria, 23; Czechoslovakia, 19; Poland, 14; Italy, 8; Spain and Portugal, 11; Sweden, 8; Denmark, 7; others, 19. The 1928 output of American producers was about 800 films at an estimated cost of approximately $115,000,000. As a market, Europe had 27,000 motion picture theaters for a population of 470,000,000, as compared with America's market of 20,500 theaters for 120,000,000 people. Irrespective of the

[13] Bureau of Foreign and Domestic Commerce, *Trade Information Bulletin No.* 617, 1929.

attitude of such a union toward American product, the development of reciprocity in the distribution of European films and joint-production contracts would hamper American film distribution.

The establishment of a "Film Europe," however, had met with many obstacles. No definite agreements had been reached. The second meeting of an international group was not attended by representatives of Great Britain. The American industry received an invitation to participate after the date had been set for the meeting.

The officials of the Motion Picture Producers and Distributors of America, Incorporated, were of the opinion that the American industry had little to fear from the formation of a cartel in the European industry, since the American interests controlled a very large share of the European market. Furthermore, the relatively small size of the European companies in the industry with the attendant lack of executives with a capacity in and knowledge of international relations made such a development improbable.

A study of recent developments in the European industry indicated that an amalgamation of interests would more likely take the form of an increased number of corporate combinations embracing activities in two or more countries. German producers, aware of the necessity for a wider market for their relatively large output of feature films, had endeavored by means of interstate agreements to create export markets in Austria, Hungary, Czechoslovakia, and Italy. At least 10 such agreements were made in 1928. French producers, in a lesser degree, had also turned to such agreements as an outlet for their product. Two agreements of this sort were reported in 1928:[14] Cineromans (French) with British International, and with Terra (German); Franco-Film (French) with Gainsborough (British) and Deutsches Lichtspiel Syndicat (German).

Such interstate agreements were considered by the association to be only temporary in character, because in most cases they tended to favor the company in the stronger position at the time. Lacking in any tie-up of exhibition outlets, as a rule, they provided, at the most, merely assurance of distribution and control of credit. Many agreements had not been extended beyond the initial

[14] Bureau of Foreign and Domestic Commerce, *Trade Information Bulletin No. 617*, 1929.

agreement because of failure on the part of the stronger interests to live up to the general terms of the arrangement.

Uncertainty concerning the future legislative restrictions in France would hinder, as it had in the past, the activities of American motion picture companies. Under existing conditions, there was little incentive to promote subsidiary producing facilities, distributing contacts, or exhibition houses with American capital. Losses through the suspension of business during negotiations on quota restrictions were unfortunate, not only for the welfare of American companies, but also from the standpoint of the French exhibitor.

Of interest in this connection were the proceedings at Geneva. An international convention for the abolition of import and export prohibitions and restrictions was signed in Geneva in November, 1927, and a supplementary agreement in July, 1928. A considerable number of exemptions and exceptions were approved on the general principle that moral or humanitarian grounds or reasons of public security might be used as a reason for restrictions. As films were not specifically mentioned as an exception, the matter was brought directly before the July conference by the American Minister to Switzerland, who protested against the assignment of such reasons as a pretext for the restriction of American films when the real motive was believed to be a desire to protect home industry by restrictive measures which it was the intent of the convention to abolish.

COMMENTARY: Any commentary which would deal adequately with the issues involved in this case would of necessity be too extensive for publication in this volume. Two general types of issues are involved. One relates particularly to the commercial problems. The dominant place in the French market maintained by American motion picture companies is quite understandable. It was due to a number of factors, among which may be mentioned the momentum of the early start, the greater financial resources, and the larger number of acceptable films produced by American companies. It was natural to expect that French producers would seek to control a larger part of their own market as time elapsed. It was not surprising that they should have resorted to legislative support for their efforts. This policy was in common with that of motion picture interests of other foreign countries. In this particular case it would appear that the French interests had overreached themselves. The inability of mere legislative action to overcome powerful economic forces is again

apparent. In the present instance, moreover, it appears that the exhibiting interests did not whole-heartedly support the program advanced by the French producers. Their failure to do so, in the light of the subsequent events, illustrates the ultimate power of the public and of the exhibitor over producer-distributors.

A second very fundamental question arises, although little emphasis is laid upon it in the case. The subtle power of the screen to influence public opinion has long been recognized. Many foreign countries are much concerned about the effect of the American film upon the mind and thought of their nationals. It is a matter of primary concern to the United States that pictures exhibited abroad truly interpret American life and that they properly interpret American ideals. Unfortunately this has not been the case. This whole problem, too, is closely related to that of promotion of international peace. The complications become even more serious, since European exhibitors find it difficult to get along without American films, when American producers, secure in this knowledge, are indifferent to the effects of American-produced films exhibited abroad upon foreign thought and policy.

In the long run, the best protection of American motion picture interests abroad, assuming that a solution is found to the problem of producing multi-lingual sound pictures, appears to lie in a willingness to distribute good foreign-made films in the United States and to exhibit abroad only pictures which do not arouse antagonism or friction and which truly present America to the world. Definite and constructive thought to the ultimate consequence of distributing abroad pictures not arousing resentment and misunderstanding is demanded. To forego from time to time some immediate profit may be necessary if such a policy as is here suggested is to be adopted. Whether or not such a long-time point of view will be developed and maintained still remains to be seen.

February, 1930 H. T. L.

Universal Pictures Corporation

PRODUCER AND DISTRIBUTOR—MOTION PICTURES

Sales Integration—*Establishing Chain of Theaters to Insure Steady Outlet for Films.* A corporation producing and distributing motion pictures, hoping to secure a steady outlet for its pictures, decided to acquire a chain of theaters, and chose to locate its theaters in small urban centers rather than in metropolitan centers.

(1925)

The Universal Pictures Corporation owned and operated a group of 13 motion picture theaters for the sole purpose of advertising and exploiting its films. In 1925 it was concerned with the problem of securing a steady outlet for its films and decided to acquire a chain of theaters for that purpose. It had been suggested that the company build up a chain of medium-size theaters in small urban centers. It was necessary that the company decide whether to adopt this suggestion or to follow the practice of other motion picture producers, who were building up chains of theaters in the larger metropolitan centers.

The Universal Pictures Corporation was one of the leading producers and distributors of motion picture films in the United States. It had been established in 1912 by one of the pioneers in the industry. It produced all types of films, including features, newsreels, short comedies, and such other short subjects as informational and advertising films. Its administrative, financial, and distribution headquarters were in New York City and its production headquarters at Universal City, California, where it had its own studios. The company's films were distributed through its own organization under the direction of a general sales manager in New York City. This organization maintained 36 exchange offices throughout the United States each of which served a definite sales territory. A force of 150 salesmen operating from these exchanges sold the company's films to exhibitors.

The volume of sales of the company's products had been large, approximating $21,000,000 in 1925. The company had been selling to all classes of exhibitors, including those who

operated large metropolitan theaters, those who operated theaters of medium size, and those who operated small rural theaters. It had been selling to independent exhibitors as well as to those who operated large chains. Since it released a large number of films of all types, its product was well suited for distribution to all types of theaters. It sold its films to many of the small exhibitors in the United States under the Universal Complete Service Plan.[1]

While the distribution of the films of the Universal Pictures Corporation was fairly uniform throughout the United States, there were certain sections in which the executives considered the sales volume unsatisfactory. These sections included principally New York, Florida, and certain sections of the Middle West and the extreme Southwest.

About 1925, several of the leading producer-distributors began to build up chains of theaters by erecting new theaters or by securing control of old ones. They used the chains thus established as outlets for their films. In these chains they used the films of competing producers only as such films were needed to supplement programs composed of their own productions. Because of the growth of these chains, many theaters which before 1925 had been possible users of the films of the Universal Pictures Corporation no longer constituted possible customers. The Universal Pictures Corporation believed that it was necessary to secure some kind of controlled outlets to supplement the outlets the company then had through independent theaters. To accomplish this purpose it was essential that the company acquire a large number of theaters in many different centers.

The control and operation of a large chain also would make possible the sale of the company's pictures to theaters controlled by other producers. The theaters of the other producer-distributors usually required some pictures in addition to their own to complete their programs. The purchasers for such theaters were inclined to consider with favor, if the quality were satisfactory, the pictures of the producers who were able in turn to offer the best outlets for their pictures. The Universal Pictures Corporation, if it acquired a chain of theaters, would require some outside films and thus would be in a position to offer satisfactory outlets for the films of other companies operating theaters.

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[1] See Universal Pictures Corporation, page 273.

Although the company's attention originally had been attracted to the field of theater operation by its need for controlled outlets, its executives considered that its primary interest in the operation of theaters was centered in the profits to be derived from that operation. An additional incentive for acquiring controlled outlets was the expectation that the theaters so acquired would constitute points of contact with the public which would enable the company to judge public taste more accurately.

Having decided to acquire a chain of theaters, the company was forced to decide what type of theaters to acquire and in what locations. Other producer-distributors were acquiring theaters in large metropolitan centers, and in some places had gained virtual control of most of the theaters. If the company were to begin building up a chain of theaters in similar locations, it would find itself buying theaters in competition with these producer-distributors, and, as a result, probably would find itself forced to pay exorbitant prices.

Many large cities and towns already were thought to be over-seated. Certain operators of motion picture theaters held the belief that the average American city would support profitably one motion picture theater seat to every 10 persons. In some cities where competition among producers trying to build up chains and other theater builders had been particularly keen, there was in operation one theater seat for fewer than 10 persons.

In view of the financial strength of the organizations operating in large cities, it was probable that if the Universal Pictures Corporation entered into competition, its operations would be carried on at a loss at least for a time. Should the company acquire theaters in the centers in which other producers had done so, it also would find it difficult to secure for its theaters the outside feature pictures which would be required to complete its programs. Other producers having theaters serving the same localities would see to it that most of their pictures, and certainly their best pictures, were shown by their own theaters, which would be given exclusive first-run rights and protection of several weeks against other exhibitors. Distributors usually protected a theater exhibiting their pictures for the first time in a community by agreeing not to sell such pictures for further exhibition in the same community until after the expiration of a certain period of time. The length of this period varied from two weeks to as long as two

months. In like manner the theaters of the Universal Pictures Corporation would demand exclusive and protected rights for the first showing of Universal pictures. Where such theaters were in the same locations as the theaters of the company's competitors, this condition would prevent the sale of the Universal Pictures Corporation's films to its competitors' theaters. Even though the films were traded in some way by two of the competing theaters in the same city, no additional outlets would be secured since both theaters would be serving the same community.

If the company acquired only theaters in the metropolitan cities with large seating capacity and high admission charges, it would secure a higher gross income for the display of its pictures than if it bought smaller theaters in smaller centers. The operation of theaters in the metropolitan cities also would be of greater advertising value than the operation of smaller theaters with fewer customers and less prominence. This advertising might be exploited to create a general demand among the smaller theaters for pictures which had been especially popular in the metropolitan theaters.

If the company, on the other hand, were to adopt a program of acquiring most of the theaters for its chain in the smaller cities or towns, it would meet little competition from other producers who were building up chains of theaters and who had their interests centered for the most part on the larger theaters in the metropolitan cities. Thus the company might expect to acquire its theaters at more reasonable prices. It was believed that overseating was not so prevalent in the small urban centers as it was in some of the metropolitan cities and, since the company expected to buy more theaters than it would build, and anticipated making very thorough surveys before going into any building project, there was little likelihood of the development of an overseating problem of any importance. By buying theaters in communities that were not overseated, the company would enhance its prospects of profitable theater operation. Judging from the results secured by other theater operators in such places, it seemed reasonable to anticipate a satisfactory profit in the operation of the company's theaters thus situated. With theaters situated in small urban centers where most of the competing theaters were independently owned and only a few were members of chains owned by large producer-distributors, the company

would have no difficulty in securing the additional films it would have to buy from other companies to complete the programs of such theaters.

If the company acquired theaters in the small urban centers, it not only would be establishing fixed outlets for its own pictures in such centers but also would be placing itself in a position, since it would need outside pictures, to offer its theaters as outlets for the pictures of other producer-distributors, which for the most part had none of their own theaters in such places. Inasmuch as the company then would be a customer of one or more of the other producer-distributors, the executives of the Universal Pictures Corporation expected to have less difficulty in selling its pictures to them for use in their theaters.

If the company acquired most of its theaters in small urban centers, it would secure wide distribution through such outlets but would find it necessary to acquire a greater number of theaters to secure a given gross revenue from that distribution than from distribution through a group of larger theaters in metropolitan cities. Methods of acquiring control of theaters were varied; new theater buildings might be erected on land owned or leased by the company; old theater buildings might be purchased; or a part or an entire interest in a corporation owning or controlling a theater or chain of theaters might be acquired. As a result, the outlay of the company in each case would be different, so that it was impossible for the executives to estimate in any way the relative cost of a large number of small town theaters as compared with the outlay for control of a smaller number of large theaters. If it decided to operate small theaters exclusively, the company definitely would lose the opportunities for advertising an exploitation which the operation of large theaters strategically located would present.

The directors of the company decided to build up a chain of theaters in towns of from 5,000 to 50,000 population, concentrating their theater-buying efforts in those sections of the United States in which the company's distribution was small. After a few theaters had been acquired, the stockholders of the Universal Pictures Corporation organized the Universal Chain Theaters Corporation to own and operate theaters and to continue building up the chain by purchasing, erecting, and securing control of additional theaters. The object of this company was to make

a profit from the operation of theaters. Although it furnished an outlet for the films of the Universal Pictures Corporation, which company in turn assured it a steady supply of films, its policies were not subordinated to those of the Universal Pictures Corporation.

COMMENTARY: Two distinct issues arise in this case: first, was it essential for the Universal Pictures Corporation to own its own theaters; secondly, if a chain of theaters was to be desired, what should be the primary object in such ownership and what type of theaters would best accomplish the desired end?

While it is true that a majority of large producer-distributors do control their own chain of theaters, it does not appear definitely proved that such ownership is necessary to the success of a producer. This was particularly true in 1925. Certain important companies even in 1929 owned practically no theaters. This was true, for example, of Pathe Exchange, Incorporated, the Columbia Pictures Corporation, and Tiffany-Stahl Productions, Incorporated. It is true, on the other hand, that even in 1925 the larger companies had obtained control over a substantial number of theaters, either directly or indirectly.

Various reasons may be advanced why the Universal Pictures Corporation should have owned its own theaters. It is not clear that, in the minds of the executives, there was a definitely outstanding reason. It is indicated that at first the company was interested in securing a steady outlet for its films. This would suggest that theaters were to be acquired largely as an aid to the production department. Later in the case it is suggested that the theaters were to be obtained primarily for bargaining purposes. At another point it is indicated that the theaters were to be of value because they enabled the company to exploit its pictures more advantageously. Again it is indicated that the theaters were to be of some value in serving as a check upon the type of films the public desired to see, and, finally, it is suggested that the theaters were to be sought because it was believed that they would yield a profit in themselves.

If the object of theater ownership was to obtain exploitation, then the argument for the ownership of smaller neighborhood theaters is quite beside the point. Exploitation cannot be obtained in neighborhood theaters. While it is probable that the use of the theaters would serve as an added check on the type of pictures the public favored, it does not appear that this was at any time a major object of the company.

The argument that the ownership of theaters would provide an element of bargaining strength has on the surface greater weight. It

does not appear, however, that the experiment of this company in owning neighborhood theaters for the purpose of bargaining was a happy one. Three reasons perhaps may be advanced in explanation. First, assuming that a large amount of exploitation work had not been done, the value of Universal pictures to competitive distributors would be substantially less than had the Universal Pictures Corporation controlled outstanding key theaters. Furthermore, the rentals obtained by such competitive distributors from the Universal Pictures Corporation would be substantially less in any event, since film rentals in neighborhood theaters were materially less than in the larger key theaters. Again, it must be remembered that there were a very substantial number of subsequent-run houses available to competitive distributors. In other words, these competitors were only incidentally dependent upon the Universal Pictures Corporation for their neighborhood distribution. The latter company, on the other hand, could not very well get along without the rentals obtained from the larger key theaters. These, in many cases, were owned by companies with which the Universal Pictures Corporation hoped to bargain. If one is to judge by the data given in the *Film Year Book* for 1928, it would appear that at no time did the Universal Pictures Corporation own more than 300 theaters. Assuming this very generous figure, and assuming further the very conservative estimate of 18,000 motion picture houses in the United States, it would appear that the corporation never controlled more than from 1% to 1½% of the theaters in the United States. These were neighborhood and not key theaters. It is clear, furthermore, that the number of controlled theaters was not, at that time at least, great enough to provide any very substantial outlet for the pictures of as large a producer as was this company.

It would thus appear that the policy of the Universal Pictures Corporation relative to theater ownership was unwise, whether considered from the point of view of providing outlets for its own films, or a basis upon which to bargain, or exploitation centers.

It is impossible, on the evidence in the case, to judge whether or not the theaters made a profit in themselves for the corporation. It would seem somewhat questionable for the company to launch upon an extensive program of this sort without some very definite knowledge as to relative costs. The case does not state whether or not such analysis had been made by the company. It is entirely conceivable that a company might own a chain of neighborhood theaters and realize a profit from their operation. It is possible also that the control problem would be somewhat more difficult because of the greater variety of local difficulties to be faced.

November, 1929 H. T. L.

Universal Chain Theaters Corporation

THEATER OPERATING COMPANY—MOTION PICTURES

Site Selection—*Survey of District to Determine Profitable Theater Location.* A company owning and operating motion picture theaters desired to locate a new theater in a growing section of Brooklyn, New York. A study of the trend of population, type of district, competition, real estate costs, and profit estimates based on past experience, gave the company standards for decisions as to exact location and amount of money to be invested.

(1926)

On December 25, 1925, the principal stockholders of the Universal Pictures Corporation, which produced and distributed motion picture films, organized the Universal Chain Theaters Corporation to acquire, own, and operate motion picture theaters. The Universal Chain Theaters Corporation was expected to operate at a profit and, in addition, to further two other important objectives. The board of directors of the Universal Pictures Corporation reported that the entrance of competing producer-distributors into the field of theater ownership was reducing the number of outlets for the films of the Universal Pictures Corporation, inasmuch as these competing producer-distributors were using the theaters which they had acquired as exclusive outlets for their own films. The second motive in establishing the chain, therefore, was to combat this situation and secure controlled outlets for the films of the Universal Pictures Corporation. The third objective was the hope that by closer contact with the public through the operations of the theater chain, the Universal Pictures Corporation might be able to ascertain more easily what type of films the public desired to see.

Early in 1926 the Universal Chain Theaters Corporation was considering erecting a theater in the New Utrecht Avenue district in Brooklyn, New York. Before making a decision it made a thorough survey of the district. In the first place it considered the possibility of profitable operation there. It studied the population and its probable growth, the type of district, the nature of the

competition, and the past sales of the Universal Pictures Corporation products in that district.

The survey was conducted by a man sent out by the real estate department of the company. This department managed the details of buying land and supervised the erection of theaters thereon. It took care of leases and contracts, inspected the theater buildings which were offered for sale to the company, and made surveys of districts in which the company was considering buying or erecting theaters.

The district under consideration in Brooklyn centered on New Utrecht Avenue, a long street with fairly important retail centers at the subway stations. It was a residential district in which old wooden single-family houses were being replaced rapidly by two- and four-family brick dwellings. The survey included, as being within the sphere from which the theater would draw patronage, an area of 20 square blocks, which was thought to constitute a district community. This district had a population of approximately 150,000. The population had increased about 10% in 1923, 10% in 1924, and 30% in 1925. The unusually high rate of increase in 1925 was due to a real estate boom. The executive in charge of the survey estimated that the rate of increase in population would drop to 10% and remain at that level for a number of years. He believed that this rate of increase would be made possible through the replacement of one- and two-family frame dwellings by small apartment houses. Most of the people were of the Jewish race and of the middle class; there were a few well-to-do families in the district. A large proportion of the population was employed outside the district and commuted to and from work. There were theaters near this district, which regularly drew people from it. Many families in the district owned motor cars which they frequently used to go to motion picture theaters outside the district. Many of the people also attended theaters in uptown New York, using the subway to go and return.

The only theater in the district, however, was situated on the corner of 43rd Street and New Utrecht Avenue and was owned by Loew's, Incorporated, a company which owned and operated a large chain of motion picture and vaudeville theaters. Loew's, Incorporated, also owned a company which produced and distributed motion picture films. The theater was housed in an old building with a seating capacity of 2,200. An average admission

price of 50 cents was charged. The enterprise had been successful, the theater often being filled to capacity with a waiting line. The Universal Chain Theaters Corporation had been unable to secure information on the number of tickets sold each week. The programs presented by this theater were usually composed of vaudeville and motion pictures. The motion pictures shown were those produced by the Metro-Goldwyn-Mayer Pictures Corporation, the Paramount Famous Lasky Corporation, and First National Pictures, Incorporated. In the past, Universal films had had no outlet in this district.

The Universal Chain Theaters Corporation for some time had been basing many of its calculations on the assumption that the average community would support 1 theater seat for every 8 or 10 people. It believed that its past experience warranted this assumption. Inasmuch as this district then had a population of 150,000 and had only 2,200 seats, or 1 seat for every 70 people, the man making the survey was of the opinion that the district could readily support another theater of more than medium size.

The site selected for the proposed theater was on the northeast corner of 46th Street and New Utrecht Avenue, three 200-foot blocks from the nearest subway station. The frontage occupied half of the running block; the other half of the block was vacant property, but plans were being made by its owners to erect retail store buildings thereon. The adjoining blocks to the south and to the north on both sides of New Utrecht Avenue were occupied by small retail stores. The site was well located with reference to the most important retail center in the district, which was the intersection of 43rd Street and New Utrecht Avenue. It was the company's opinion that the most profitable theater location was the junction of the two most important retail business streets, the streets where the principal specialty shops and the five-and-ten-cent chain stores were situated.

The survey also showed that there were adequate parking facilities near-by and that the subway and surface lines furnished adequate transportation. The man making the survey did not make a count of the number of pedestrians and the number of automobiles passing this site. The site could be purchased at a reasonable price in line with prices for near-by property. Real estate values in the vicinity of this corner were increasing rapidly.

In order to determine the profit that reasonably might be expected from the operation of a theater situated in the district being surveyed, the man making the survey asked four of the company's employees, who had had experience in the operation of theaters in communities similar to the New Utrecht Avenue district, to make independent estimates of the gross receipts. When these estimates were compared, it was found that they varied from $9,000 per week to $14,000 per week, with an average of between $10,000 and $12,000. These figures were based on an average admission charge of 50 cents. Having past experiences in mind, these men thought that 60% of the box-office receipts would be required to pay all current operating expenses, including cost of films shown. It was estimated that a sum equal to 10% of the cost of the land and the building would have to be set aside from gross earnings each year to cover depreciation on the building, interest on the investment, and taxes and insurance. The men making the estimate agreed that about 20% of the gross was a reasonable figure to be devoted to rent or the carrying charges on the building and land, including the depreciation, interest, taxes, and insurance. This estimate left a net operating profit of 20% of the gross revenue.

The Universal Chain Theaters Corporation decided to erect a motion picture theater on the northeast corner of 46th Street and New Utrecht Avenue. Although the survey showed that the district was underseated and that 12,000 more seats probably could be added without creating any problem of overseating, the estimated gross revenue limited the amount that could be expended profitably in the erection of the building and consequently limited the number of seats if the demands of modern style for a de luxe theater were to be met. The company decided to erect a modern de luxe theater with about 3,000 seats. While this number would not be sufficient to seat all prospective patrons on Sundays and holidays or when an unusually popular picture was being shown, the executives believed that it would yield the highest net return. They hoped to fill the theater completely on an average of twice a day or, in other words, to sell 6,000 tickets daily. One of the executives of the Universal Chain Theaters Corporation said: "It is reasonable to assume with any theater that you can completely fill it 1½ times a day. This, of course, is only an arbitrary determination . . . Some theater estimators

figure 2 times a day and some figure 1½ and I have known some to figure 3 full performances a day. It all depends upon the locality."

After several changes had been made by the architects, the plans as finally adopted provided for 2,600 seats. The company bought the land for $167,500, erected a building costing $724,688.14, and purchased equipment costing $148,000.

COMMENTARY: This case is of interest chiefly as illustrating a method of procedure. It should be noted that the theater was erected primarily for the sake of the profit which might be derived from it and not for exploitation purposes. The location of the theater in the retail area as described in the case, if compared with similar experiences in other instances, appears to have been wise.

In view of what has been said, the detailed comments which might be appended are of secondary importance. It may be noted that no count of pedestrian traffic was made. Most companies had believed that such pedestrian counts were extremely desirable. It may also be noted that an allowance was made of one theater seat to every eight to ten people. This may have been a proper allowance for the city of Brooklyn. In some parts of the United States, however, an allowance of one seat to fifteen people is considered, if anything, too high.

November, 1929 H. T. L.

Athens Theaters, Incorporated[1]

THEATER OPERATING COMPANY—MOTION PICTURES

Site Selection—*Survey to Determine Profitable Theater Location.* A corporation owning and operating motion picture theaters desired to locate a theater in a New England mill city. A survey of the population of the town, the industries of the community, the types of competition, and the costs of desirable real estate enabled the company to select a profitable location. The theater paid for itself in less than three years.

(1913)

In 1913 the Athens Theaters, Incorporated, of Boston, Massachusetts, considered the advisability of erecting a new theater in Milltown,[1] Massachusetts. At that time the corporation owned and operated five theaters, two in the city of Boston and three in near-by cities, with an average seating capacity of 1,850. It had been more than ordinarily successful in providing popular motion picture entertainment.

An investigation of Milltown as a location for a theater disclosed the following facts. The city had a population of about 110,000. The population had increased 25% in each of two 10-year periods. The city extended for four miles along a main street which had one principal business center and two other less important shopping centers evidently in process of formation. The chief industry of the city was the manufacture of fine cotton goods, in which it occupied a commanding position; the mills had paid substantial dividends over a long period.

The housing conditions in Milltown were poor. Before the rise of the cotton industry Milltown had developed as a seaport. As was common in older New England seaports, the land was divided into very small parcels and the houses were small. In the interval between the shipping prosperity and the cotton mill development, much of the property had run down and little new housing of respectable character had been provided. Few people of wealth remained in the city, the major part of the population

[1] Fictitious name.

being made up of mill employees. From the point of view of the theater such conditions were considered favorable. If homes were uncomfortable and overcrowded, people would seek outside diversion at the theater.

The existing competition was examined. There were 17 so-called picture theaters scattered throughout the city with a total seating capacity of about 10,000. All these theaters were of the "store show" or "upstairs" variety: motion picture show quarters produced by remodeling large stores, lodge rooms, and other buildings. At six o'clock in the evening there were few people on the streets of Milltown; at eight o'clock the streets were almost deserted. A visit to the theaters showed them to be fully attended. On further study it was found that it was a regular habit of the workers to go directly to the motion picture theaters after dinner.

The one industry upon which the city depended was carefully considered. The entire city would be affected if the manufacture of fine cotton goods should suffer depression. At that time, however, Milltown showed higher earnings among its employees, better records of dividends paid, larger growth in population, and a greater increase in bank deposits than other cities in the state. It appeared to the company to promise, in spite of its risky specialization, a sufficiently stable situation to justify an investment, providing the investment was amortized before a general change in conditions occurred.

It also appeared that the existing competition might easily be made inconsequential. The company believed that a theater large enough to make it possible to offer the best entertainment, and fine enough to make the shabbiness of all other theaters in the city painfully evident, would inevitably obtain the available patronage, even at a price somewhat in advance of that to which the townspeople had been accustomed. A theater with a seating capacity of 2,500 at a building cost of approximately $125 per seat would meet the requirements. Such a theater would normally be erected only in the best location of a larger city.

The site proposed was within two blocks of the main transfer point of a street car system, which was also the center of business. Every local car line would pass this site. It presented, however, some serious disadvantages. It was just large enough to accommodate the theater building, with no surplus space for commercial

purposes other than two small stores at each side of the lobby. Inasmuch as the site was situated at a street corner, it would be necessary to spend much more on the exterior treatment of the theater than would be the case if the exterior of the theater proper could be hidden by surrounding buildings. Moreover, the land sloped in the opposite direction to the slope of the theater floor; this condition would entail additional excavation and foundation work. Lastly, the proposed location lay between two churches. One of these occupied the remaining frontage in the block of which the theater site was nearly one-half, and the other occupied the opposite corner of the side street. Church buildings, nearly always dark at night, would separate the theater from the remainder of the buildings on the street.

In view of these disadvantages, a careful study of the central district was made in order to ascertain whether another location more suitable for the theater could be obtained. It was found that no more favorable site was available, as to secure any other parcel of land of sufficient area in this district would necessitate an assemblage of early cottage properties. A department store, for example, occupied land made up of 17 original divisions, some of which were still held in the form of leaseholds. To secure enough land for a more desirable location would require much time and would eventually result in a higher cost than that of the proposed site. As a result of the investigation, the company felt assured that no rival theater company was likely to enter the city and secure the advantages of a more favorable location.

The company believed that the apparent disadvantage of the site in respect to separation from other business buildings could be disregarded. Milltown was not a city where people thronged the streets and could be drawn into the theater as they passed, but rather one in which people would go to that theater at which they had been informed a good show could be seen. The additional costs in building construction because of the topography of the land were likely to be less than the additional expense in securing a more favorable site.

Building plans showed that the desired capacity of 2,500 seats could be attained, but that the lobby would be cramped unless more land was available. The original parcel had a frontage of 100 feet and a depth of 163 feet, leaving about 35 feet in an adjoining property between the rear of the theater property and the next

street. The owner of the adjoining property wanted $40,000 for his land, and negotiations for the purchase at an acceptable price were fruitless. The company did not consider the purchase of the church property.

The original parcel of land would cost approximately $110,000, the building $250,000, and the equipment about $65,000. Financing could be accomplished by part payment on the land, a second mortgage to the owner for the balance of the land cost, a bond issue for $200,000 secured by a first mortgage on land and buildings, and the remainder from past earnings and future installment payments.

Athens Theaters, Incorporated, decided to build a theater. The land was purchased by a subsidiary of the corporation, this subsidiary being a corporation formed for the sole purpose of owning and operating this particular property. Although the law did not require fireproof construction, it was used. As a result of building with attention to the special division of risk and the addition of sprinklers and standpipes, one of the lowest insurance rates in the state was secured.

The judgment of Athens Theaters, Incorporated, as expressed in the erection of this theater, was justified. A considerable number of the "store shows" were closed soon after the new theater was opened. The project marked the transition of exhibition to a strongly organized chain of theaters against which weak individual owners or lessees had little chance in competition. In less than three years, the theater was in a position to pay off all its indebtedness. The failure to purchase the adjoining property was later considered to have been an erroneous decision, as the limited ground area restricted operation of the theater. When two shows were given in an evening, there was insufficient space in the lobby for people who arrived before the first performance ended. Potential customers were obliged to wait on the street. The additional space would have been worth many times the price wanted for the land. The company also believed that it would have been wise to purchase the church property for appreciation in value resulting from the location of the theater.

From 1913 to 1928, many changes occurred to affect the situation. Milltown continued to prosper until the end of the period of post-war prosperity. The prohibition amendment diverted a great deal of business from the saloon to the motion picture

theater. The reaction following the period of prosperity and the later depression in the cotton textile industry were seriously felt in the "one industry" city. It suffered hard times and a severe strike. Athens Theaters, Incorporated, was absorbed by one of the largest motion picture operating companies. Two competing theaters were built. The theater remained, however, the best located, the largest, and the finest theater in the city.

COMMENTARY: This case, indicating, as it does, a distinct stage in theater development, is of interest chiefly for historical reasons. In spite of a very large number of theaters in Milltown, the erection of a de luxe house proved sufficiently attractive to cause serious embarrassment to a great many of the distinctly inferior houses that had been operating in the city.

The number of available sites for a de luxe theater was far more limited than for smaller or neighborhood houses. The case indicates that in Milltown people could not be drawn into a theater as they passed, acting upon impulse; but rather that they went to the theater at which they had been informed a good show could be seen. The decision of the company, however, would indicate either that the company did not believe that this really was the case or else that it looked forward to a time when people would enter a desirable theater upon impulse. If the latter were true, it was especially unfortunate, in this particular case, that the theater had no surplus space on which it could draw. If, on the other hand, the owners of the theater believed that people would go to a theater only after careful deliberation, then there would appear to be no good reason why even a de luxe house had to be located in the very center of the retail district where rents were high and available space limited.

November, 1929 H. T. L.

Clayton Theater[1]

MOTION PICTURE THEATER

Theater Equipment—*Selection of Sound Equipment to Be Installed in Theater.* With the advent of sound pictures, the manager of a large and successful motion picture theater considered the advisability of installing sound reproducing equipment. Convinced of the necessity for such installation, he weighed the advantages offered by the different types of equipment. A study of the expenses involved, the advances made in technical developments, the policies of the large producers, and the contracts offered led the manager to decide in favor of the Vitaphone-Movietone system.

(1928)

The Clayton Theater, built in 1922, was located in the second largest shopping district of Clayton, a suburb of metropolitan Cleveland. It was second in size of a group of five Clayton motion picture theaters and the most attractive in appearance. Clayton, a city of 120,000 population, was largely residential and was one of the richest suburbs in the district. A large part of its inhabitants had occupations in Cleveland and were enabled to commute to and from the city daily because of the excellent transportation service. From the time it was opened until the later months in 1928, the theater had experienced remarkable success in securing the patronage of the public. In November, 1928, although the manager of the Clayton Theater had found that gross revenue and profit were increasing, it was his belief that the installation of sound reproducing equipment should be considered.

Sound pictures had been introduced in the larger theaters of the country earlier in the year. It was evident that those theaters in which sound systems had been installed were drawing an abnormal attendance. The first local theaters to introduce sound in motion pictures were located in Cleveland proper, and the effect upon the attendance at the Clayton theaters had been scarcely noticeable. By September, 1928, a majority of the larger theaters in Cleveland, and the largest theater in Clayton had installed

[1] Fictitious name.

sound devices; from that time it was apparent that the competition of sound pictures would sooner or later become effective. It was probable that one, at least, of the other theaters in Clayton would install the equipment.

It was difficult to judge the permanance of the appeal of sound pictures. Theatrical managers were convinced that the appeal at first was largely one of curiosity; motion picture patrons were interested in sound synchronization and the talking picture as a novelty. Much publicity was attendant upon the development of the new pictures. With the continued development of the novelty it was apparent that the appeal of curiosity was strengthened by a desire on the part of the public to hear familiar actors of the silent screen in dialogue pictures. Newsreels and short subjects, moreover, had undoubtedly been improved by the addition of sound and dialogue.

The quality of silent pictures shown at the Clayton Theater had been gradually improved until it was generally acknowledged by theater patrons that its silent picture program was equal to that of the largest theaters in Cleveland and decidedly superior to the programs of other theaters in the city of Clayton. The theater was showing first-run pictures on a double-bill basis with changes twice weekly. Two new features were presented, therefore, on Mondays and Thursdays of each week. In addition to the feature pictures, there were also shown newsreels and a short comedy subject. On Sundays, the theater included in its program a one-act presentation, usually a stage band or vocal soloist. No orchestra was maintained, but a talented organist accompanied the presentation in addition to rendering an introductory solo. It had been found advisable in a few instances to hold an exceptional picture over for an entire week in order to meet the public demand.

In talking with his patrons, the manager of the Clayton Theater ordinarily found that silent pictures were considered preferable to the more recent sound pictures. Previews of forthcoming releases in both the sound and silent fields convinced him, however, that the better pictures for the next year would be produced with sound. While a picture could be purchased with or without sound synchronization, it was apparent that the silent version of a sound picture was unquestionably inferior to the sound version of that same picture and also inferior to past releases of other pictures in

the silent field. The major producing companies were devoting their attention to sound pictures. From the standpoint of better entertainment, therefore, the manager was convinced that the installation of a sound reproducing system was advisable.

Before installing sound equipment, it was necessary to determine whether the additional outlay in expense would be reimbursed through an increase in gross revenue. The additional weekly operating expense was approximately $1,000. It was estimated as follows: write-off of investment, $60; interest on investment, $20; increase in projectionists' wages, $190; equipment service charge, $50; synchronization, $150; increase in film rental, $350; sound news, $100. A doubled projection force and additional wages for the normal force were required by the trade union of machine operators. Offsetting this additional outlay, it was possible that better entertainment furnished by the new sound pictures might enable the theater to lengthen the run of its pictures, thereby reducing the film rental expense. Assuming that a first-run picture in the territory cost $1,000 for three days, the additional cost for the balance of the week would not exceed $500. On the other hand, the rental on sound news would be greater than that of the existing silent news. The managers of certain local exchanges maintained by distributors had stated a policy whereby a theater with sound equipment would not be permitted to choose individual sound versions, but must choose either all silent pictures as per existing contracts or all sound pictures.

The increase in gross revenue because of sound installation was difficult to forecast. Because of the appeal to curiosity, the increase in revenue probably would be higher at first. Future revenue would depend entirely upon the quality of entertainment that could be produced with sound synchronization. It was the opinion of the manager that the latest releases were a distinct improvement over the earlier productions and that further developments would be favorably received by the public.

Clayton was not overseated in comparison with other cities of its size. Partly because of its metropolitan location, the Clayton Theater drew upon a considerable population, and good entertainment would always attract a profitable attendance. The theater would seat 2,000 at capacity. Weekly attendance, including matinee and evening performances in October and

November, 1928, averaged 14,000. The operating costs, including fixed charges, averaged about $4,500 per week. Admission prices were 25 cents for adults and 15 cents for children under 12 from 2 p. m. to 4:30 p. m. except on Sundays and holidays, when the admission for adults was increased to 35 cents. Evening prices, after 4:30 p. m., were 50 cents for orchestra seats, 40 cents for balcony seats, and 75 cents for mazzanine chairs, with no reduction for children. A continuous performance was presented from 2 p. m. to 10:30 p. m., each presentation approximating three hours in length. The total attendance during the evenings of the week, excluding Sunday, could be increased by 3,000 without overtaxing the seating capacity of the house. The manager could not assure his directors, however, that a sufficient increase in gross revenue would be obtained to meet the additional expense without increasing the price of admission.

In considering the sound reproducing equipment available in the market, the manager of the Clayton Theater confined his attention to the two most widely known sound synchronizing systems: the Western Electric system and the RCA Photophone. He was of the opinion that the synchronizing devices developed by smaller companies might be discriminated against by producers of sound pictures on the grounds of poor quality reproduction. He was not interested in the non-synchronous devices.

The Western Electric system included two types of equipment: the Vitaphone and the Movietone. The former recorded sound by the disc method. It was the oldest device in the market, and a large number of pictures had been produced by the Vitaphone method. The Movietone recorded sound by photographing it on the film. The larger motion picture producers from whom the Clayton Theater purchased the greater part of its annual program used either the Vitaphone or the Movietone system. The Western Electric Company, through its wholly owned subsidiary, Electrical Research Products, Incorporated, distributed to theaters sound equipment whereby films recorded by either the Vitaphone or Movietone systems were reproduced. This dual purpose equipment was commonly known as Vitaphone-Movietone.

The manager of the Clayton Theater was informed that the Western Electric Company was developing a more technically perfect device which offered better tonal qualities in sound reproduction and which would replace the existing device within

a short time. The new improvements were such that they could be added to the system already installed at a reasonable cost.

The Photophone was the most recently marketed of the recording systems, although many years of experimental work had been spent in perfecting the device. It was distributed by RCA Photophone, Incorporated, a wholly owned subsidiary of the Radio Corporation of America. The latter company had recently acquired control of a motion picture producing and distributing company and a chain of theaters. The Photophone recorded sound by photographing it on the film. RCA Photophone, Incorporated, distributed to theaters sound equipment for reproducing films which had been recorded on the Photophone. Studio reproduction indicated that the Photophone system was the equal of, if not superior to, the Vitaphone-Movietone system in sound reproduction.

Both the Photophone and Movietone systems would reproduce any films recorded by the sound-on-film method, whichever of the two systems was used in the recording. Moreover, the Photophone system had attachments for disc reproduction which might or might not be included in its installation. Installation of either the Vitaphone-Movietone or Photophone systems, therefore, would enable a theater to show films recorded by any one of the three processes.

Installation costs and service rental charges varied slightly in the Western Electric and Photophone systems. The installation charge on the Vitaphone-Movietone system for the Clayton Theater was $15,000. The Photophone system, including disc reproducing equipment, was available for installation at the Clayton Theater for $15,500. The same system without the disc equipment cost $13,500.

In any installation, the projectors in use at the theater were replaced by new projectors. The projector of the Vitaphone-Movietone system was so designed that it would occupy the same space as the standard projector. The Photophone required a larger projector. Vitaphone-Movietone utilized horn speakers, whereas the Photophone system included cone speakers. All systems were equal from the standpoint of operation and mechanical simplicity. The Vitaphone-Movietone system had been installed by the largest theater in Clayton in October, 1928.

Both distributing companies installed systems on the terms of a 10-year contract guaranteeing supervision and service and requiring 25% of installation costs at the time of placing the order, balance on completion of installation or in monthly payments over a period to be arranged, and a monthly service charge approximating $200 per month. A résumé of the RCA Photophone contract follows:

AGREEMENT dated ...., 19.., between X Company, a Delaware corporation, having its principal place of business in the City and State of New York, and ...., a corporation (hereinafter called the Exhibitor), having its principal place of business in the City of ...., State of ....

WHEREAS, the Exhibitor is operating the .... Theater, located at .... in the City of ...., State of ...., (hereinafter called the Theater), and desires to obtain from the X Company a license to use in the Theater the electrical sound reproduction equipment hereinafter described, upon the terms and conditions hereinafter set forth.

Now, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, the parties hereto agree as follows:

1. (Agreement to install equipment on or before specified date, to provide instruction of operators, and to supervise operation for one week following installation.)

2. (Grant to the Exhibitor non-exclusive and non-assignable license to use the equipment for term of agreement.

3. (Terms of payment.)

4. (Title and ownership to remain in the X Company.)

5. (Costs of transportation and changes in the Theater to be borne by Exhibitor.)

6. (Agreement to inspect and supervise regularly all necessary repairs and adjustments in the equipment and to receive for such services a monthly service charge.)

7. (All risk of loss or damage to be borne by the Exhibitor.)

8. (Taxes to be paid by Exhibitor.)

9. (Exhibitor to supply power service.)

10. The Exhibitor will use the equipment only in the Theater and will not at any time during the term of this agreement keep, maintain and /or operate the equipment in any manner from time to time prohibited by the X Company. The Exhibitor will not, without the written consent of the X Company, alter the equipment in any particular, nor add anything to it, or take anything from it; and will not break the seal upon any part or collection of parts which is or may be sealed upon the delivery or installation of the equipment. Nothing herein contained, however, shall be construed to prohibit the Exhibitor from taking all reasonable steps to correct or repair the equipment in the event of an accident or breakdown.

11. (Exhibitor to obtain additional equipment or spare and renewal parts from the X Company and pay its charges.)

12. (Exhibitor to exercise care to prevent use of equipment in unsatisfactory condition.)

13. The exhibitor may use the equipment for the electrical reproduction of sound from films or records, whether or not such films or records have been produced by the X Company, or in accordance with the recording process of the X Company; provided, however, that the Exhibitor shall not be entitled to use upon or in connection with the equipment any sound films or sound records made by any recording process other than the process of the X Company, if such use might injure the equipment or tend to impair the efficiency or quality of reproduction of the equipment, or be in any way detrimental to the reputation of the X Company's products, or involve the X Company in any liability to any person whomsoever.

14. (Identification of X Company recording process to be maintained on film or record in reproduction.)

15. (Theater to be open to representatives of X Company.)

16. (X Company to be under no liability to Exhibitor or Theater employees for loss or damage, consequential or otherwise, except as specifically provided in section 17.)

17. The X Company will, subject to the provisions hereof, at its own expense defend any and all actions and suits which may, during the term hereof, be brought against the Exhibitor for infringement of patents by reason of the employment by the Exhibitor of apparatus and equipment furnished by the X Company hereunder and used for the purpose and in the manner contemplated by this agreement . . .

18. (Provision for removal of equipment at expense of Exhibitor by reason of expiration of agreement by lapse of time or upon earlier termination pursuant to any provision of the agreement.)

19. (Agreement and license shall be terminated by expiration on specified date or by failure to make any payment or to comply with requirements.)

20. (Provision for removal of reinstallation of equipment in the event that Exhibitor ceases to operate the Theater.)

21. (Right of assignment to the X Company but not to the Exhibitor without the written consent of the X Company.)

22. (Agreement contains the entire understanding of the parties hereto with reference to the subject matter hereof.)

IN WITNESS WHEREOF the parties hereto have caused this agreement to be executed by their duly authorized officers in the City and State of New York, the day and year first above written.

SCHEDULE A

Description of the Equipment covered by the foregoing Agreement.

The contract offered by Electrical Research Products, Incorporated, differed from that of RCA Photophone, Incorporated, in

three important respects. The provision defining the equipment service and inspection charge included a clause to the effect that the stated charge should not be exceeded during the first 52 weeks of the period of the license and thereafter should not exceed a sum approximately 20% lower than the first charge. The insurance was borne by Electrical Research Products, Incorporated. The period of license, provided the exhibitor should not be in default in respect to any of the terms of the agreement, might be terminated at the option of the exhibitor at any time after the expiration of the first 52 weeks upon not less than six months' written notice.

Installation of the Vitaphone-Movietone system could be arranged for July 1, 1929, or thereafter if the order were placed prior to December 1, 1928. A similar order would insure the installation of Photophone on or after February 15, 1929. An early installation would have no effect upon the purchase of pictures to be shown prior to September 15,1929, inasmuch as the program of pictures to be shown up to that time had already been contracted for. A majority of these pictures were silent; a few had been produced with sound versions and showings of these pictures could be made with or without sound.

Prior to placing his order, the manager of the Clayton Theater took the opportunity of visiting theaters in which installations of the two systems had been made. A comparison of the two systems was found to be difficult because of the variation in the type of pictures filmed. It was his belief, however, that the Photophone system presented the more satisfactory reproduction.

An article in *Harrisons Reports* of August 18, 1928, gives the following discussion of the two systems:

> The greatest enemy of good reproductions is imperfections in developing or dirty sound track. It causes a ground noise. Of the two film systems, the Movietone is subject to ground noise more than is the Photophone system, for the reason that the sound "shadings" of it can be affected by oil or by other dirt, whereas the Photophone system, not depending on "shadings" cannot be affected to an equal degree . . . In the Photophone, defect in the grain structure of the emulsion as well as imperfections in developing have less effect on the quality of the sound, for the reason that the defective part can be painted over with no detrimental effect on the sound.
>
> The diaphragm used by the Movietone and Vitaphone has its limitations. It cannot stand overloading. In sounds of great volume,

it is liable to destroy itself. In low-frequency loud sounds it must rattle . . . The Photophone does not use a small separate diaphragm or a horn; the paper cone that is used for projecting the sound itself acts as a diaphragm . . . It is my opinion, in fact, that no diaphragm-using system can reach the volume or the frequency ranges that are reached by the instruments that employ the cone system of sound reproduction and projection. The cone system produces a better quality of sound, too.

There are two types of sound projection: the horn type, and the cone type. The horn has several disadvantages. It cuts off the low frequency sounds (bass notes) below a certain point . . . To reproduce the entire range of low sounds it will require a horn so long and so cumbersome that it will be necessary for the theater owner to install a wrench to lift it up whenever he needs to use the stage for some other purpose. The paper cone presents no such defects and difficulties.

The horn distorts some sounds and suppresses others. This occurs because the horn reinforces certain tones, producing unpleasant "resonance points"; it makes the sound unnatural. This defect is noticeable in the human voice more than it is in the musical or other sounds; the voice sounds hollow . . . The horn possesses some other defects.

From an investigation of the supply of sound pictures, the manager of the Clayton Theater learned that a majority of the larger producers, including all but one of the companies with whose distributors he was under contract for films, had entered into agreements with Electrical Research Products, Incorporated, for leasing recording equipment in the production of sound pictures. The agreement in each instance exceeded 15 years.

In reaching a decision as to the system of sound reproducing equipment for installation in the Clayton Theater, the manager considered the fact that the larger motion picture producing companies had entered into agreements with the Western Electric Company to be of vital importance. For that reason, therefore, he favored the Vitaphone-Movietone system. Also, the contract offered was more favorable, and the installation would require no readjustment of the projection booth. While the Photophone system was, in his opinion, superior to the other system at that time, he believed there was no reason why the Vitaphone-Movietone system should not, over a period of years, be equal, if not superior, to the Photophone system.

A contract was signed for the earliest possible installation of the Vitaphone-Movietone system in the Clayton Theater. The equipment included Movietone, with disc equipment, synchroniz-

ing device, the non-synchronous device, and a microphone for making announcements.

Commentary: This case introduces several interesting issues. The owner of this theater believed that sound equipment was necessary: first, because the novelty appeal of sound pictures could be capitalized; second, because sound pictures might prove to be permanent; and third, because motion picture producers would devote practically all their attention to the production of sound pictures and consequently the number of available silent pictures would be reduced materially and would be likely to prove of inferior quality. He reasoned, therefore, and probably rightly, that although unable to anticipate with any definiteness how great the added gross box office receipts might be, he was compelled to install sound equipment. Furthermore, he felt compelled to do so immediately, although realizing that such equipment would probably cost substantially less at some future date. If increased box office receipts were to be obtained, it seems reasonably clear that the increase would be due either to a greater number of patrons or to the fact that longer runs were possible with an attendant lower proportional film rental, and not to the charging of higher admission prices.

A distinct issue was presented to the manager in the fact that the best equipment, from the point of view of quality, was sold under conditions which seemed to him to be disadvantageous. Assuming that a great majority of inferior sound equipment was so distinctly of a lower quality as to be not worthy of consideration, the question still arose as to a choice between Vitaphone-Movietone on the one hand, and Photophone on the other. In his judgment, the latter was of superior quality; yet he chose the former. There are three reasons why this decision was reached: mainly, the contract was more liberal; second, it was his belief that, although at present inferior, the Vitaphone-Movietone equipment would eventually be of as high quality as Photophone. It was true also that his judgment was affected by the fact that a majority of the producer-distributors from whom he purchased pictures were using Vitaphone-Movietone recording equipment.

His decision not to use one of the other types of equipment which were substantially lower in price, was unquestionably sound. Particularly in the developmental stage of sound pictures, the theater's patronage undoubtedly would suffer if inferior equipment were adopted. Furthermore, it was undoubtedly true that much of this equipment would be alleged as infringing upon basic patents held by such companies as the Western Electric Company and the Radio Corporation of America.

November, 1929 H. T. L.

Price, Waterhouse & Company

ACCOUNTANTS

Accounting—*For Expenditures for Sound Reproducing Equipment under Lease Contract.* Auditors for several theater operating companies had to determine the proper accounting procedure for expenditures for electrical sound reproducing equipment, which typically was leased under a non-exclusive, non-assignable license for a period of 10 years, with an initial payment of 25% of the license fee at the time of installation and the balance, together with carrying and service inspection charges, to be paid weekly. The accountants recommended that the full amount of the license fee be set up as an asset with a liability of corresponding amount to the licensor, and that the cost be amortized over a term of five years. That portion of the weekly payments representing carrying, service, and inspection charges was to be considered as expense as paid, and all repairs and replacements were to be charged off currently.

(1929)

With the advent of motion pictures synchronized with sound, a number of problems arose as to the accounting procedure a theater should follow in the treatment of expenditures made for electrical sound reproducing equipment. Price, Waterhouse & Company, as auditors for several theater operating companies, mostly large chain theater corporations, made a study of the situation to determine the proper accounting procedure.

Under the terms of the agreements offered by one of the foremost licensors of this type of equipment, an exhibitor was granted a non-exclusive, non-assignable license for the use of sound equipment in his theater for a period of 10 years, the title and ownership of the equipment remaining vested in the licensor. Upon termination of the license, it was specified that the equipment should be returned to the licensor in good order and condition, allowing for reasonable wear and tear and for obsolescence. By the terms of the lease, the exhibitor made an initial payment plus weekly payments during the term of the license.

As a specific example, an exhibitor agreed to pay an initial charge of $3,262.50, which was 25% of the total license fee,

payable \$1,305 on or before execution of the contract and the balance, \$1,957.50, upon completion of the equipment installation. In addition, the exhibitor agreed to make weekly payments throughout the term of the license. These were to be \$146.70 per week for the first two years, and thereafter, for the balance of the 10-year term, they were to be in accordance with the licensor's then current schedule of weekly payments for similar licenses, but were not to exceed one-fourth the weekly payment agreed upon for the first two years. While the wording of the contract gave little information as to the nature of the charge represented by the individual payments, after the remainder of the license fee had been paid, it was known that the payments covered interest and insurance, and service and inspection charges. This example was based on the form of contract of one of the large licensors of electrical sound reproducing equipment; the contracts of other licensors varied considerably in their terms.

When the first theaters were equipped with sound devices, differences of opinion existed among exhibitors as to the accounting procedure to be followed. Sound pictures were an innovation in the amusement field; the number of such pictures available for exhibition was limited; there was little definite knowledge as to the durability and utility of the equipment; and there was no certainty as to the permanency of this form of entertainment.

Some of the plans proposed by exhibitors, using the above example for convenience of illustration, were:

(a) To capitalize the first two payments (\$3,262.50) as cost of installation to be written off over a period of two years, and to consider as operating expenses all weekly payments as made.

(b) To capitalize the entire amount payable within the two years (\$18,519.30), to be amortized evenly over the period of the license (10 years), and to charge to operating expenses currently all subsequent weekly payments.

(c) To capitalize the first two payments (\$3,262.50) plus three-quarters of the total weekly payments during the first two years (\$11,442.60) and to write off the aggregate (\$14,705.10) over 10 years by weekly charges of \$28.28. It was argued that as the weekly payments after the first two years were to be reduced to an amount not exceeding one-fourth of the weekly payment provided for the earlier period, three-fourths represented the part applicable to the license fee.

Price, Waterhouse & Company considered Method (a) to be incorrect in that neither the total cost of the license fee nor the

full amount of the liability to the licensor would be set up. The operating results would be on a conservative basis, but the first two years would be unduly penalized.

According to the auditors, to treat the entire amount payable within the first two years as the cost of the license, as mentioned in Method (b), would mean: (1) that the carrying charges under the deferred payment plan and the service and inspection charges relating to the period would be improperly capitalized; and (2) that while the license granted was for a period of 10 years, the amortization of the cost of the license over that term could not be considered a conservative course to follow so long as uncertainty existed as to the permanency of the new form of entertainment. The auditors objected to Method (c) because the cost of a license was ascertained and conclusions were arrived at by supposition, and the auditors also criticized the period of amortization.

Price, Waterhouse & Company made a study of the situation, and ascertained that the total sum payable under the license agreement could be segregated in relation to:

(1) License fee, including installation of licensed equipment
(Covered by initial payment and a portion of the weekly payments over the first two years)

(2) Carrying charges for interest and insurance under deferred payment plan
(Included in payments made in the first two years)

(3) Service and inspection charges
(Included in payments over first two years and the entire amount of the payments during the remaining eight years of the license period)

The payment made upon the execution of the agreement represented 10% of the total license fee including installation charges. There were also charges such as freight and cartage, forming part of the installation cost, which are not considered in this discussion. The auditors recommended to their theater clients that the full amount of the license fee and installation cost (ten times the amount of the payment made on the execution of the agreement) be set up on the books as an asset with a liability of corresponding amount to the licensor. In view of the comparatively recent development, the lack of certainty that this form of entertainment would continue to receive the support of the public, and the possibility that improvements might render the present equipment obsolete before the expiration of the license period, five

years was considered to be a fair term over which to amortize the cost. The portion of the weekly payments representing carrying, service, and inspection charges was to be considered as expense as paid each week; all repairs or replacements of parts were to be charged off currently.

In the example given the transactions would be recorded as follows:

Dr. Lease of Equipment..........................	$13,050.00	
To Licensor..............................		$13,050.00
To set up the cost of the License Fee or the sound reproducing equipment leased from .... for .... Theater under agreement dated.		
Dr. Licensor..................................	1,305.00	
To Cash..................................		1,305.00
For deposit on sound reproducing equipment for .... Theater on date of signing contract.		
Dr. Licensor..................................	1,957.50	
To Cash or Notes Payable..................		1,957.50
For balance of payment of installation charges at time of completion of installation.		
Weekly Entries:		
Dr. Amortization..............................	50.19	
To Reserve for Amortization of Lease of Equipment..............................		50.19
To provide for amortizing license fee and cost of installation over a period of 260 weeks (5 years).		
Dr. Service and Inspection Charges and Carrying Charges..............................	52.59	
Licensor..................................	94.11	
To Cash..................................		146.70
Distribution of weekly payment for first two years, subject to revision should weekly payment be reduced.		

After the payments had been made for two years the following entries would be made for the next three years:

Dr. Amortization..............................	$ 50.19	
To Reserve for Amortization of Lease of Equipment..............................		$ 50.19
Dr. Service and Inspection Charges.................	....	
To Cash..................................		....

After the first five years the payments for service charges, repairs, and maintenance would be charged directly to operations.

COMMENTARY: The first method suggested in this case has been favored by many exhibitors, both because it is somewhat less compli-

cated than the others and because it serves to amortize rapidly a liability based on entertainment of a new and undeveloped character. Such exhibitors hold that the early profits from the showing of sound pictures would considerably exceed those profits which might be obtained during the latter part of the life of the license agreement. It is, however, also possible that this is the plan which would be most likely to place a financial strain upon the exhibitor if the success of sound pictures did not prove to be so great as was expected. It is also open to the objection indicated by Price, Waterhouse & Company in that neither the total cost of the license fee nor the full amount of the liability to the licensor would be set up.

The second method is open to the criticism that service and inspection charges were improperly capitalized. There is reason to believe also that the 10-year period was too long. It must be remembered that sound pictures were still an experiment. The novelty feature was still strong, and its life uncertain. The matter of obsolescence, furthermore, was possibly not given adequate weight. In an industry where technical advance is as rapid as it has been in this field it would seem unduly optimistic to assume that any equipment of a technical character would have a commercial life of 10 years. The general use of the wide film and of color seems assured within a comparatively short time. Yet these innovations followed almost upon the heels of sound. On the other hand, exhibitors using this method believed that the sound picture had become sufficiently intrenched by virtue, in part, of the large investments made in this field. A number of theaters have adopted this method of amortization.

The third method on the whole appears to be the most satisfactory. The major objection to the plan seems to be that the five-year period is too short and that it is arbitrary. That it had to be somewhat arbitrary can be conceived; one might well question whether any period settled upon in 1929 would not have been arbitrary. Furthermore, it is substantially more conservative than the 10-year period so far as the danger of obsolescence is concerned. If, as seems to be the case, the largest increase in earnings directly attributable to sound seems to develop in the earlier period of the introduction of such equipment, there is much to be said for writing off a larger proportion of the total figure during the early years. Subsequently, of course, earnings were likely to be stabilized on the basis of a somewhat lower level of film rentals and through the general adoption of sound equipment. It might be suggested also that the accounting procedure to be followed might perhaps vary somewhat in proportion to the size of the theater.

In any event, it would seem to be a wise policy for an exhibitor who realized unusually large profits, subsequent to the introduction of sound equipment, to set aside a substantial amount of such an income

for a reserve fund against future payments, irrespective of whether or not the particular amortization plan which he adopted demanded such immediate transfers. It even has been argued that, considering the uncertain nature of the situation, all net earnings be applied to the amortization of the equipment charge. This would probably be unwise in most instances, since a consistent payment of dividends is, generally speaking, sound policy wherever possible. It would not seem good policy, however, to pay unusually good dividends under the circumstances described.

November, 1929 H. T. L.

Ford Theaters, Incorporated[1,2]

THEATER OPERATING COMPANY—MOTION PICTURES

Depreciation—*Method of Calculating, for Theater Equipment.* In view of its expansion policy, a company operating a chain of neighborhood motion picture theaters believed it necessary to adopt a systematic method of calculating depreciation on its theater equipment. The three methods proposed were: to employ an accountant to install what he believed to be an adequate method; to adapt to each theater the composite average depreciation rates utilized by some of the most successful theater operating companies; and to segregate the equipment into several classifications in a manner similar to that used by a large theater operating company and to establish depreciation rates for each classification in a like manner.

(1929)

Ford Theaters, Incorporated, of San Francisco, California, owned and operated a chain of four neighborhood theaters located in the outlying districts of the San Francisco Bay regions. In July, 1929, the company was preparing to open a de luxe theater in Alameda, a town of about 30,000 inhabitants, and had formulated plans for 3 similar additional units to be constructed in near-by cities during the following 18 months. Since its organization the company had maintained its theater equipment in excellent condition but had given little thought to the derivation of a scientific method of figuring depreciation. In view of the company's immediate and future expansion policy and the radical changes that were taking place in theater equipment, the president believed that the company should adopt a more systematic method of calculating depreciation rates. He therefore instructed the treasurer to investigate possible methods of such calculations, especially those used by the large theater chains.

To familiarize himself with the details of his task, the treasurer had prepared a complete cost analysis of the company's new Alameda Theater. Parts of this analysis are shown in Exhibits

[1] Fictitious name.

[2] Adapted in part from articles written for the *Exhibitors Herald-World* by George Schutz, January 19, 1929; and A. J. Michel, August 3, 1929.

1 and 2. Similar figures were not available for each of the four neighborhood theaters. Current estimates could be obtained, however, by a physical valuation.

EXHIBIT 1

COST ANALYSIS OF ALAMEDA THEATER BUILDING

Cost of theater		$221,138	
Cost of commercial part (stores and apartments)		33,311	
Cost of entire building			$254,449
Cost of equipment			56,450
Architects' fee			18,654
Total			$329,553
Cost per Seat			
Theater section			$143.15
Theater equipment			36.50
Architects' fee			11.35
Total cost per seat			$191.00
Number of seats on main floor	1,123		
Number of seats in balcony	420		
Total number of seats	1,543		
Volume of theater in cubic feet		858,852	
Cubic feet of theater per seat, approximately		495	
Square feet of floor space rentable for stores and apartments			4,627
Number of stores			5
Number of apartments (11 rooms)			7

Unit Cost of Project per Cubic Foot
(Expressed in Dollars)

Theater and commercial section	.298
Commercial section alone	.350
Theater section alone	.290
Theater equipment	.074
Theater section and equipment	.364
Theater section equipment and architect	.385

After a thorough investigation, three methods were submitted for the president's approval. The first suggested that the company employ an accountant to install what he believed to be an adequate method of calculating rates of depreciation. Dependent upon the capabilities of the accountant, much could be suggested in favor of this plan, particularly because it offered the only practical means by which the peculiarities inherent in each Ford theater might be taken into consideration. It was discarded, however, because none of the local accountants was familiar with motion picture theater operation, and the services of one of the large national accounting firms that had specialized in motion picture accounting were deemed too expensive for this project.

Exhibit 2

Equipment Cost of Alameda Theater Building, by Classification

	Cost in Dollars	% of Total Equipment Cost
Opera chairs	12,000	21.32
Booth equipment	7,500	13.00
Box office equipment	750	1.33
Portable electric equipment	750	1.33
Scenery (including asbestos curtain)	5,000	8.90
Rigging	3,500	6.21
Orchestra chairs and stands	600	1.07
Carpets	5,000	8.90
Draperies	600	1.07
Decorative furniture	2,000	3.55
Statuary	500	.89
Artificial birds	300	.54
Artificial flowers	1,500	2.66
Stunts	500	.89
Electric light fixtures	4,000	7.10
Signs	5,000	8.90
Lamps	2,000	3.55
Organ (1st payment of 10 equal installments)	1,500	2.66
Display frames	500	.89
Uniforms	750	1.33
Opening expenses	1,000	1.78
Organ lift; orchestra lift	1,200	2.13
Total	56,450	100.00

The second plan involved the adaptation to each Ford theater of the composite average depreciation rates utilized by some of the more successful theater operating companies. The third method suggested the segregation of equipment into several classifications in a manner similar to that used by the Publix Theaters Corporation and the establishment of depreciation rates for each classification in a like manner. Should the company decide upon either the second or third alternative, the services of an accountant were held to be unnecessary.

Dependent upon the type and grade of equipment, a fair composite rate of depreciation was estimated to be between 15% and 20%. In the treasurer's opinion, the composite average method offered many advantages not found in the more detailed segregated rates. In the first place, depreciation standards, at best, were average rates based on experience, and that which might be true for one theater would not necessarily hold true for another.

Furthermore, it was possible that the equipment of the four operating Ford theaters could not be segregated accurately into several classifications.

On the other hand, he believed that certain weaknesses were inherent in the plan. For example, under the composite average method replacements became an immediate expense, because the equipment asset had already been capitalized and could not again be capitalized, and the replacement thereof through immediate expense would distort and incorrectly reflect the profit and loss results by an abnormal write-off during the period in which replacements had been made. If, under the composite method, a 15% rate was used for all equipment, and carpets were replaced in three years, the replacement would have to be treated as an immediate expense in its entirety instead of being spread over a three-year period, because the original installation of carpets was being depreciated by a composite 15% rate.[3] Furthermore, composite averages tended to depreciate long life items too rapidly. For example, an organ and chairs written off under a seven-year composite average might have several remaining years of life that should still be reflected on the company's balance sheet.

The third alternative eliminated some of the principal objections to the composite method. The segregated depreciation rates used by the Publix Theaters Corporation were based on replacement records for the past 12 years and had taken into consideration changing conditions in the industry, particularly as to improvements of types and standards of equipment. While the various Ford theaters were somewhat smaller than the average Publix theater, they were of a generally comparable nature. It was recognized, however, that it might be necessary to make some allowance for the nature and grade of equipment and perhaps for the number of programs given daily in each theater. On the other hand, since it was necessary for the Publix Theaters Corporation to maintain the latest standards and highest grade of efficiency, equipment replacements perhaps were made oftener and as a result the rate of depreciation should not differ greatly from that applied to the less pretentious theaters.

The Publix Theaters Corporation's rates of depreciation segregated by classes of equipment were as follows:

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[3] *Better Theaters*, August 3, 1929.

Asbestos curtain, carpenter shop (excluding small tools which are items of immediate expense), lobby railing and chains, seats, check room equipment, electric light fixtures, orchestra stands and chairs, organ, steel lockers and safes, special electrical equipment (such as usher signal system, aisle lights, public address amplification system, dictograph and inter-office telephone, stage switchboard, auditorium cone and flood light fixtures), and marquise (special consideration to be given if integral parts of the structure made of bronze or copper)—rate of 10% per year. Expensive paintings, metal vases, statues and other art objects and relics should be separately classified on the books, inventoried periodically, and not depreciated.

Electrical stage equipment, spotlights, signs (not including electric light bulbs, all original installations being written off within six to twelve months, with replacements as immediate expense), and furniture (such as chairs, settees, tables, mirrors, floor and table lamps, vases—other than metal, and theater office furniture)—rate of 15% per year.

Sound installations and related alteration costs (pick-up), equipment being given a two-year life and original installation of bulbs, vacuum tubes, etc., being written off within six to twelve months, with replacements as immediate expense, draperies and stage curtains, projection room equipment, projection screens, ticket and change machines, turnstiles, pianos, and miscellaneous stage and theater equipment—rate of 30% per year.

Carpets, rugs, and railing coverings—rate of 33⅓% per year. Usher and doorman uniforms written off within three to six months, with replacements as immediate expense.

The following types of theater equipment, because they possessed longer life and were integral parts of the building or structure proper, frequently were classified as building equipment. Moreover, since it had often been necessary to make such installations in an otherwise equipped theater, the Publix Theaters Corporation classified them as theater equipment.

Electrical work (wiring, conduits, outlets, building switchboard), plumbing, radiators, steam lines and other piping, and sprinkler system—rate of 4% per year.

Elevators, counter-weight system and elevating machinery for orchestra platform and organ console—rate of 5% per year.

Refrigerating and ventilating system, drinking water, cooling system, and boiler room equipment—rate of 6⅔% per year.

Painting, decorating and murals, ticket booths and poster frames, and accoustical treatment—rate of 10% per year.

Linoleum and rubber flooring, and miscellaneous building equipment—rate of 20% per year.

Commentary: This case is particularly concerned with the proper method of setting up an equipment depreciation rate for a chain of theaters. Three proposals were made.

The first was that an accountant be employed for the purpose of suggesting a treatment of the problem. This proposal was discarded on two grounds: first, that it called for a specialized knowledge which might be difficult to obtain; second, that it was too expensive. It is true, of course, that the employment of such an accountant was by no means essential. If the management of the corporation possessed sufficient accounting knowledge and business experience, there is no reason why it might not be able to solve its own problems. It is not clear that the decision in the present case was wise. It may be noted that the real problem was not setting up an accounting system for merely four theaters; the company expected to add other theaters to its chain. The expense, therefore, should properly be considered in the light of the ultimate needs of the company rather than of its immediate requirements.

Having decided not to employ an accountant, the company was faced with the necessity of determining a depreciation rate for its equipment on the basis of its own experience and good judgment. Two alternatives were suggested to it. Under the one, no attempt would be made to segregate the equipment into various classifications. The probable life of each item would be determined, and an individual depreciation rate arrived at accordingly. A simple arithmetic average would then be computed from these individual rates. No conscious weighting of their relative importance would be undertaken. It would be obvious, however, that unconscious weighting would result, since the low-cost, short-life equipment would be given the same weight as would the high-cost, long-life items. It would appear that the executives had in mind the establishment of such a rate. This conclusion is based on the statement that the treasurer did not believe that the equipment of theaters could be divided accurately into several classifications, and also on the statement that composite averages tended to depreciate long-life items too rapidly. The experience of several companies had indicated that it was possible to classify equipment on the basis of its probable life. Waiving the question of the soundness of the treasurer's belief, however, it is apparent that composite averages would not tend to depreciate long-life items too rapidly for equipment as a whole, if weighted according to relative investment in such equipment. Whereas some equipment might depreciate more slowly than the average rate would indicate, other equipment would depreciate more rapidly. If the figure were accurately determined, therefore, the net result would be the setting up of a depreciation reserve, which would closely harmonize with the requirements of the

company. The only arguments that can be advanced for a simple, unweighted arithmetic average rate, would be that it was simple, and that all rates involved some exercise of judgment. In the present case, these arguments do not appear conclusive.

The other alternative was that of classifying the equipment on the basis of its probable life. An average depreciation rate for each class would then be determined. It is probable that the depreciation rate for each class of equipment would be an unweighted average rate. The various class rates would then be combined into a single depreciation figure in which, presumably, each class rate would be weighted according to the proportionate investment represented by that particular equipment. Such a plan would have an obvious advantage over the former. There would still be some error introduced unless conscious weighting was resorted to in determining the class rates. Theoretically, at least, a weighted figure would have some advantage here over the unweighted. It is to be doubted, however, if the attempt to carry the weighting to such an extreme would result in enough additional accuracy to make it worth the effort.

The advantage of using weighted rates of depreciation may be made clearer if an illustration is used. It would appear that Ford Theaters, Incorporated, invested $5,000 in carpets, $15,000 in an organ, $7,500 in booth equipment, and $2,000 in decorative furniture for the Alameda Theater. Carpets depreciated at 33⅓%, the organ at 10%, booth equipment at 30%, and decorative furniture at 15% per year. On the basis of a straight average, this would mean approximately a 22% depreciation on an investment of $29,500, or at the rate of about $6,490 per year. On the other hand, if weighted averages were used, the computation would have somewhat different results. Assuming that the organ would normally be taken care of by setting aside $1,500 a year for 10 years; carpets, $1,666 for three years; booth equipment, $2,250 for a little over three years; and decorative furniture at $300 a year for 15 years, the total per year for these four items would then amount to $5,716. The composite depreciation rate, based on this analysis, would be 19.37% of the total investment of $29,500.

If this reasoning be correct, then Ford Theaters, Incorporated, would be setting aside $774 more a year on these four items than was necessary. It is apparent, of course, that for the equipment as a whole, the differential might be more or less than this amount.

The importance of selecting a depreciation policy will be apparent when one considers the real purpose of setting aside the depreciation fund. Presumably, this objective is that of establishing sound control of the finances of the corporation. If the executives honestly believed that $6,490 would be necessary to cover four items for which $5,716 actually was required, it is apparent that no true picture of the situation

would be obtained. The company might be making a profit when the books would apparently show a loss. Under other conditions, it might be conceivable that the company was actually losing when it apparently was making a profit.

It would appear, therefore, that any reasonable sum invested by this corporation in the services of a competent accountant would have been well spent, if it would result in avoiding the error which the company apparently would make.

November, 1929 H. T. L.

Publix Theaters Corporation

THEATER OPERATING COMPANY—MOTION PICTURES

Management Control—*Executive Organization for Operation of Chain Theaters.* A company organized as a subsidiary to a motion picture producer and distributor for the purpose of operating a chain of theaters faced the problem of efficient control of the individual units of the chain. The control of theaters was apportioned among 4 executives who directed the activities of 24 division managers, and these in turn supervised the managers of the individual theaters. By standardizing accounting and service methods, and by arranging local programs and advertising in cooperation with the theater managers, to allow for differences in localities, the company tried to meet the problems of chain operation and management.

(1928)

In 1925, the Publix Theaters Corporation was organized as a subsidiary of the Paramount Famous Lasky Corporation, one of the largest producers and distributors of motion pictures in the United States. For several years the Paramount Famous Lasky Corporation had been interested in the operation of motion picture theaters in various parts of the country. The operation of these theaters was carried on by several of its subsidiary companies. The Publix Theaters Corporation was established to take over and unify the operation of these theaters and of additional theaters to be acquired from time to time. Most of the executives of the corporation had been executives in smaller chains of theaters in which the parent company had become interested. The problems of chain operation and management, therefore, were not new to them. The company desired to establish that degree and type of operating control over the units of the chain which would be conducive to the most efficient operation.

The theaters which were part of the Publix Theaters Corporation chain had been acquired in a variety of ways and were held under a number of different arrangements. Some of the theaters had been built by the Publix Theaters Corporation; some were leased. The company had acquired stock interest in

several companies, each of which owned and controlled a theater or group of theaters; some of these theaters the company operated. In 1928, the company was operating directly about 300 theaters and was interested in the ownership and operation of another 350 theaters.

The Paramount Famous Lasky Corporation expected several benefits to accrue from the unification of operation of the various theaters. In the first place, by buying for all its theaters, it would be able to purchase motion picture films in large quantities, whereas previously the subsidiary organizations had bought for each theater individually. This, the executives believed, would give the theaters the advantage of wholesale buying and practically assure them the use of the same brands of motion pictures throughout the chain. The purchases would be made in most cases by negotiations direct with the general sales managers of the producing and distributing companies. Inasmuch as the theaters operated by the Publix Theaters Corporation naturally would buy and exhibit most of the pictures of the parent company, that company would benefit by having a permanent, substantial, and definite market in its theaters for its own product. This was the reason why the Paramount Famous Lasky Corporation originally became interested in theaters and it continued to be the principal consideration in the operation of the circuit.

One alleged weakness of buying pictures in one large purchase for a chain of theaters was that it did not grant the individual theater managers sufficient discretion in the selection of their programs. Critics of this type of theater control were of the opinion that the varying local likes and dislikes of the theater audiences were not met. They believed that chain operation had a tendency to lay down a standardized form of entertainment for all communities regardless of their needs. The corporation was inclined to discount this criticism for several reasons. The chief reason was that it proposed to permit its managers to express a preference for the type of pictures they would like to show on their screens. The corporation also believed that a sufficient variety of screen entertainment was furnished by producers to give every community a widely varied program and that with only a little adjustment on the part of local theater managers the entertainment furnished by most of the large producers could be made to suit local needs.

The company established its executive offices in New York City. At these offices were the president and vice president and, immediately responsible to them, the general director of theater management. The director worked in close harmony with the executives of the parent company. Also in New York City were the advertising department, the film buyers, the department which had charge of preparing and routing the stage shows for the company's de luxe theaters, the repair and supply departments, and the accounting and finance departments.

Under the general director of theater management the control of theaters was divided among four executives. One of them was in charge of the operation of the company's de luxe or class A theaters (Division A). These were the large new theaters which offered a combined stage and motion picture show. Another executive was in control of the Class B theaters (Division B), in which group was included the smaller theaters. In a city in which the company had both class A and class B theaters the management of all the theaters in the city ordinarily was under the supervision of the director of class A theaters. There were a few exceptions to these rules. Most of the theaters in New England and on the West Coast were not under the control of these two executives but were in charge of two other executives respectively.

Under these four executives there functioned 24 division managers, each of whom was in charge of the operation of the company's theaters in a certain territory. Under some of the division managers there were two or three district managers who had charge of still smaller territories. Directly under the district managers were the managers of the individual theaters. In some of the larger cities the company had established city managers to supervise the operations of all the company's theaters in those cities.

The problems of control which interested the executives of the company were many. The most important were: purchase of pictures and booking of theater programs, selection and training of employees, advertising and publicity, control of supplies, equipment and repairs, public contacts, and control of the expenses of operation.

The selection of programs of entertainment began in the New York office with the activities of the buyer. At the beginning of the theatrical year, when making his largest purchases of pictures, the buyer was supplied with complete reports on the results of the

exhibition of the pictures he had bought in previous years, as well as with recommendations from theater managers, district managers, and division managers as to what type of pictures they thought should be purchased for the ensuing year. With this information he combined his own general knowledge of the conditions in the industry and of the quality of the new year's pictures. Many factors outside the actual requirements of the various theaters in the chain influenced his purchasing. Prices demanded by producers, the quality as well as the type of their pictures, and the relations between the producing company and the theater company influenced the purchaser's decisions. In some instances the company had entered into contracts to take a substantial part of the product of certain producers over a period of years. The object of these contracts was to assure to the company the use of a product which it had found over a long period to be particularly suited to its requirements, and also to preserve the goodwill which its theaters were building up by advertising the trade brands and the stars and featured players of those companies.

After the pictures had been contracted for it was necessary to schedule them to the company's theaters. The booking department of the New York office prepared programs from six to eight weeks in advance for all the theaters using the pictures and other entertainment that had been purchased or contracted for. These programs were prepared on master booking sheets and sent direct to the managers of all the theaters, with copies sent to the district and division managers. The theater managers were instructed to inspect the programs assigned to them and to report any suggestions or criticisms they had to their district or division managers.

Each theater manager studied the different pictures assigned to him for their story values, for the box office attraction of their stars, and particularly for any local appeal the pictures might have. Pictures which might be offensive to the class of people who attended his theater he would ask to have eliminated. He also might ask for a rearrangement of his program to take advantage of local events and special occasions. When the theater manager had completed his study of the program assigned to his theater and had indicated any suggestions, he sent it to his division or district manager, who either recommended or refused to recommend his suggestions. The district or division manager

forwarded the booking sheet to New York, where final approval or disapproval of the suggested changes was given.

The approved alterations were made, together with the alterations thus necessitated in programs of other theaters, and a corrected booking sheet was prepared. Copies of this were sent directly to the theater managers, to the district and division managers, and to the district booking offices that the company maintained in the key cities of the industry, which were those in which most of the distributors had the exchanges through which they sold and distributed their pictures. While the Publix theaters used largely the pictures produced by the Paramount Famous Lasky Corporation, they all found it desirable to use the pictures of other producers as well. The district booking offices arranged with the local exchanges of the companies from which the pictures were bought for the showing of the pictures on the dates desired, and confirmed the dates to the theater manager. If a film of the picture desired was not available for showing on the date set, the booking office reported back to the New York office, which then made the necessary changes in the program. It seldom happened that a film was not available, since the distributing company arranged to have a sufficient number of prints of the films of its pictures available at all exchanges to meet ordinary demands.

Further to insure that the programs assigned to the various theaters would be as attractive as possible to the public, the district and division managers and the district bookers held conferences every two weeks to discuss the programs of the theaters in their districts or divisions. Whenever possible the theater managers were in attendance at these conferences. The theater managers' ideas were always given careful consideration.

While to a casual observer it might appear that this method of selection of programs somewhat neglected the interests of the theater-going public in a specific community, the executives of the company believed that the method was more sensitive to the demands of the public and more capable of giving the public new and original programs of pleasing entertainment than was the system by which the selection of programs was left to the theater managers.

Almost every executive of the Publix Theaters Corporation had had wide experience in the operation of theaters, and, since

their association with the company in an executive capacity, they had kept in close touch with the theater situation in the important cities. Most of them visited theaters over the entire United States several times each year. They believed that they were in a better position to judge the value of a program of entertainment to a community than was the less experienced theater manager. Current changes in a local situation would be better known by the theater manager than by the executives, but most of the executives would know the background of the town and its entertainment history better than would the theater manager, so that they could more accurately judge the significance of the changes.

The stage programs for the de luxe theaters were the same for all parts of the United States. In most cases these theaters used the Publix Unit Shows, which were prepared by the company's own showmen in the New York office. There the casts were selected, hired, and trained, and the properties prepared. After the shows had been completed they were booked to the de luxe theaters. When a show had completed its time at one theater, it travelled on to the next one. The company had 40 of these unit shows on the road at all times.

Other parts of the stage shows, which in most cases were similar to vaudeville numbers, were booked by the district managers at vaudeville booking agencies located in their districts. The theater manager's only duty in connection with a stage show was to make sure that his stage and properties were prepared and to hire all the local talent that the show required. The orchestra and the stage band connected with the stage shows were in the regular employ of the theaters and did not move with the unit shows.

In the matter of the selection of his staff, the theater manager was not limited by the New York office. He was permitted to make his own selections from the people who were available locally. The number of people to be employed and their positions and salaries, however, were specified in regulations published by the New York office. The training of the theater staff was undertaken by the manager, who was required to follow detailed instructions contained in a manual published by the New York office called "Training of Theater Employees for Publix Service." The following classifications of employees were listed in the manual: ushers, elevator operators, messenger and service boys,

doormen and ticket takers, footmen, cashiers, lost and found and checking department, matrons and nurses, maids, porters, projection department, musical department, stage employees and artists, superintendent and engineers, firemen and oilers, and cleaning department.

Advertising and publicity were considered to be of great importance to the chain. The essence of showmanship, in the estimation of the company's executives, was to advertise the entertainment in an appealing way so that people would be tempted to come to see it. The company had formulated ambitious advertising plans to sell to the public generally the programs provided by the Publix theaters and the name Publix as indicative of the best in entertainment. The company's advertising department at the head office in New York City conducted that advertising which was intended to place the company's name before the public. It also prepared advertising helps for the theater managers. These included suggestions on general advertising and special advertising prepared for each picture. For each feature picture purchased by the company it prepared an individual advertising manual which was sent to each theater showing the picture. This manual contained model advertisements, rough sketches of possible rearrangement of those advertisements, suggested copy, descriptions of exploitation "stunts" which had been used successfully by other theater managers, and suggested publicity stories to be furnished to the newspapers. A manual like this was furnished by each distributing company for each of its pictures in the form of a press sheet. The Publix Theaters Corporation, however, drew up its own special manual for each picture.

The advertising of each theater and its programs in the local newspapers was entirely in the hands of the theater manager, with the assistance of such suggestions as he might receive from the advertising department of the head office. The newspapers and other media to be used, the type of advertisements and size of space to be used, the advertising in the lobby of the theater and on billboards, and special advertising and publicity campaigns were planned and executed by the theater manager. Some of the larger theaters were equipped with complete advertising departments but in the smaller theaters the advertising was carried out by the manager himself.

An advertising budget of a definite sum per week was prescribed for each theater. It was balanced, however, only every four weeks. Thus a manager could apportion his budget for four weeks to the pictures shown during that time in whatever proportion he wished. When a manager desired to conduct an especially elaborate and expensive advertising campaign, he was required to obtain the approval of his district manager. No minimum limit for advertising expenditures was set by the head office, but frequently such a limit was set by the district manager. About once a month the theater managers conferred with their district managers about their advertising plans.

Supplies and equipment required by the theaters were purchased in large quantities by the Publix Theaters Corporation and kept in centrally located warehouses. Supplies were issued against the managers' requisitions but were not allowed to exceed the budgeted amount. Requests for equipment and repairs were reviewed by the New York office and required its authorization.

All Publix theater managers were urged to take active part in the civic activities of the communities of which they were a part. This policy was continually emphasized in letters from executives in the home office. Reports about such activities were required occasionally.

The company kept a careful check of the expenditures of its theaters. It worked out a weekly expense budget for each theater. In the case of old theaters this budget was based on past experience. In the case of new theaters, it was an estimate based on the company's experience with other theaters of the same type and was subject to special observation and adjustment. The total budget for each theater was broken down into certain classifications.

Each theater manager was required to keep the cost of operating his theater within the budget allotted to him and was required to render a weekly report of actual expenditures on forms which permitted the ready comparison of the expenditures with the budget. This report was carefully checked by the company's auditors. When the budget was exceeded by any theater an explanation was requested at once.

Three classifications in the budget were subject to liberal interpretation by the head office. They were "Feature Cost," "Short Subjects," and "Advertising." These were expenses

which in the normal course of the show business would vary widely. Furthermore, the cost of feature and short pictures was not under the control of the manager. These three items might exceed their budgeted amount for one or two weeks, but it was required that the average over a longer period be kept within the budget. In the case of advertising expense, the budget had to be balanced every four weeks.

COMMENTARY: For the purpose of this case the reasons why theaters were acquired by this organization are immaterial. Having acquired them, however, the corporation was naturally desirous of realizing a profit on them.

It would appear highly desirable for a company owning as large a number of theaters as did this corporation in 1928 to have a system of control which was very substantially centralized in character. Such a decision is quite in accord with the experiences of other chain organizations outside the motion picture field. It is, of course, obvious that the size of the chain must remain an important factor in such a decision. Furthermore, the extent to which control is centralized should have substantial bearing upon the rapidity with which the chain expands.

It would appear that in the main there are four purposes to be achieved by centralization. These are to obtain the advantages of standardized accounting, standardized service, centralized purchasing, and a coordinated advertising policy.

It seems obvious that for any chain of theaters, irrespective of its size, a uniform system of accounting is desirable. There appears to be little question on this point.

All theater managers do not fully appreciate the importance of standardization of service, the importance of courtesy, and of consideration for patrons' interests. The significance, for example, of adequate ventilation is merely one factor which contributes more toward the success or failure of a theater than some managers seem to appreciate. It is, of course, true that the attractiveness of the picture is ultimately the criterion by which a theater is judged, but it is a rare picture indeed that can attract customers to any particular theater irrespective of such service features as have been mentioned. It may be said, therefore, that a standardization of service on a high plane is very important to the success of a chain.

The importance of centralized purchasing of films is stressed by all organizations having a rather rigid system of control. That there has been a marked tendency towards such centralized purchasing is clear. That lower prices may be obtained by such centralized buying and that, generally speaking, better terms relative to protection and to run may be obtained is also clear. On the other hand, considerable

criticism arises because managers believe that they are better judges as to the type of pictures to be shown in their particular communities than is any centralized authority. Doubtless, there is much to be said for such a decision. Assuming, however, first that someone closely in touch with local conditions has a real voice in the selection of the films originally purchased, and assuming that in the actual booking of films purchased real regard is had for varying local conditions, the criticism just indicated loses some of its strength. It may be noted, also, that in a theater chain which is very large, and particularly in one which is growing very rapidly, a great many of the local theater managers upon whom reliance must be placed, at least temporarily, are not such expert judges of film values as they sometimes believe. On the other hand, the opinion which prevails in certain quarters, particularly among those interested in production, that a picture which proves a success in one part of the country will of necessity prove a success in other parts of the country is not correct. Thus, it is sometimes believed that a picture which is a success on Broadway will always be a success elsewhere. This is not true. Curiously enough, it is also thought by some critics that the only persons qualified to judge of the drawing appeal or value of a picture are those who are in daily contact with Broadway. This is also quite incorrect.

A substantial measure of central control over advertising seems desirable. The Standard Exhibition Contract provided that any advertising material used by the local exhibitor, even of an independent theater, had to be confined to that provided by the distributor. In practice, this clause was not enforced. It suggests, however, that much advertising material provided by a distributor may be considerably better than most of the material provided by many local managers.

At the same time, however, it may be well to direct attention to what the commentator believes to be a distinctly unwise policy—that of charging the exhibitor prices for this advertising material that will give to the distributor a profit, as some motion picture companies do. The distributor's advertising department is not comparable in this respect to the independent advertising agency, for at least two reasons. One is that the service in the present instance is theoretically compulsory. In the second place, the real object in inducing the exhibitor to accept this service is to insure larger box office receipts, to the end that the independent exhibitor may be strengthened, through obtaining a larger profit on the distributor's picture. The larger profits to the distributor should come through the sale of his pictures, and through real cooperation with the exhibitor and not through the forced sale of an auxiliary service, important though it may be. In other fields, dealer helps are usually provided to a retailer at cost or less, and properly so. The same policy could well be applied here.

On the whole, perhaps, it may be said that local advertising should be in the hands of the local theater manager. Such a policy applies particularly to the advertising of the local theater as a theater. The general advertising of the pictures shown in a chain house may well be in the hands of a central agency. This policy is definitely suggested in the present case.

The chief criticism of centralized control centers on the assumption that the local manager is primarily a showman, that showmanship cannot be taught, but must be born in the individual, and that to suppress the showmanship instinct destroys initiative and may well prove fatal both for the individual and for the company. To the commentator this argument does not have preponderant weight. The same philosophy has been held relative to teachers, to business men generally, and even to the medical profession. If by it is meant that a man must have an interest in his work, the usual measure of intelligence, and some comprehension of the responsibilities and the opportunities of his position, then the statement is true. If by it is meant that no man can prove a successful manager of a theater who has not spent his entire life in the theatrical business, or that a man may not profit by training even if of a somewhat academic character, or that some reasonable measure of control may not profitably be exercised by those responsible for the success of a large number of theaters, each of which is a unit in a chain, then the statement is not correct. The policy of the Publix Theaters Corporation in the establishment of its training school for managers and in the issuance of various manuals indicates that the point of view of this corporation is quite in accord with that here expressed.

That some measure of flexibility is essential in chain theater management is suggested in various points throughout the case. Recent developments in this corporation have suggested that perhaps a divisional plan of management might be substituted for that described in this case, a plan which would throw added responsibility upon regional and house managers. It is mere common sense to assume that flexibility must be provided, but such flexibility should never lead to such decentralization as might well prove most unfortunate for a chain the size of that referred to in this case.

November, 1929 H. T. L.

Mokan Theaters, Incorporated[1]

THEATER OPERATING COMPANY—MOTION PICTURES

Executive Organization—*Selection of Managers for Chain Theaters.* A company which had recently acquired a small chain of motion picture theaters for operation, in determining the type of manager to place in its theaters, considered the two general types available: the chain manager, who was a local representative of a central organization, and the independent manager, who assumed practically the entire burden of responsibility for the local theater. Believing that local conditions demanded different types of entertainment in the different theaters and that the managers should be able to analyze their communities, to determine effective methods of exploitation, and to cooperate with local business men in carrying out such exploitation, the company decided to select its theater managers from those of the independent type.

(1929)

Mokan Theaters, Incorporated, was organized in 1928 to operate a chain of motion picture theaters. Mr. Mokan had operated successfully for a number of years a motion picture theater in Centerville, New York. During 1928, the corporation acquired for operation five additional theaters. Four were purchased from a circuit in financial difficulties and the fifth was leased for operation. The company planned to lease additional theaters in 1929. Because of existing contracts for services and film rentals, the company had made no changes in the policies of the acquired theaters during 1928. In March, 1929, however, it was considering the type of manager to place in its theaters for the theatrical year 1929–1930.

There were two general types of managers available: the chain manager, who was a local representative of a central organization; and the independent manager, who assumed practically the entire burden of responsibility for the local theater.

It was Mr. Mokan's desire to introduce his own theories of theater management. In his opinion, a central purchasing department could buy pictures and supplies much more effectively

[1] Fictitious name.

and economically than could the local manager. He believed also that the aid of a central advertising department could not fail to be of service to the house manager. In setting up the central organization, therefore, he planned to provide for supervision of those activities regardless of the type of managers finally selected.

One of the largest chains of motion picture theaters controlled all the activities of its theaters from the main offices, and relied upon its managers only for supervision of the theaters. Films were rented and bookings made at the main office. The amount to be spent for advertising and the manner in which the pictures were to be exploited were determined centrally and communicated to the local managers. Even donations to charity were made only after approval by the central office. For managers, this chain recruited men from high schools and colleges and gave them systematic training in theater management.

In another chain of theaters, the local managers were given a large measure of control over theater expenditures. Film rentals were arranged for centrally, and maximum expenditures were specified for the various requirements, but otherwise the managers controlled the expenditures. They were responsible for securing the best results from the authorizations.

Exhibit 1 shows the location of the company's theaters, their seating capacity, and the number and size of competing theaters.

The Gem Theater was the larger of the two theaters in Marsden, a small agricultural city. In Larson, the Modern Theater

Exhibit 1

Theaters Operated by Mokan Theaters, Incorporated

Theater	Seating Capacity	Built	Location*	Population	Total Number of Theaters	Total Seating Capacity in Town
Grand	1,500	1923	Centerville, N. Y.	150,000	19	24,000
Gem	1,700	1921	Marsden, N. Y.	11,238	2	2,000
Modern	1,400	1919	Larson, N. Y.	23,100	4	4,000
Princess	1,300	1924	Clearwater, N. Y.	25,000	4	5,000
Rialto	2,500	1926	Bradford, N. Y.	30,000	5	6,000
Empress	2,600	1927	Newton, N. Y.	180,000	24	22,000
New Palace	2,500	1928	Mohawk, Conn.	190,000	17	17,500

* Names of towns are fictitious.

was the largest but was not so strong competitively as a newly erected theater controlled by a large distributing company. Of the four theaters in Clearwater, the Princess was third in size and competitive position. Larson and Clearwater were cities with a large percentage of foreign-born citizens employed in the leather, cigar, and electrical industries. The Rialto Theater was the second largest and the most enterprising of the five theaters in Bradford, a city of industrial and agricultural interests. Newton, New York, was the location of a large eastern university; the Empress was the third largest theater in the city. In Mohawk, Connecticut, the New Palace was the most modern theater in the city and the next to the largest in seating capacity.

The entertainment in the seven Mokan theaters varied in several respects. At the Grand Theater the program was changed weekly. This theater had been one of the first to install sound reproducing equipment; it presented all-sound programs without orchestra or organ. The Gem Theater maintained a combination vaudeville and picture program. On Monday, Tuesday, and Wednesday the program included a feature picture, newsreel, comedy, and organ solo. On Thursday, Friday, and Saturday, a "tab" show, that is, a burlesque production that was taken from city to city, was substituted for the comedy and organ. On Sunday, a double feature picture program without vaudeville was shown. The Modern Theater showed only motion pictures; a split-week change in program was in effect. At the Rialto Theater a picture program changed on a split-week basis was accompanied by a full week of vaudeville. The Princess Theater ran a sound picture program from Sunday to Wednesday, a silent program for the balance of the week, and exhibited vaudeville features on Thursday and Sunday of each week. The program at the Empress Theater was changed weekly and included feature pictures, sound and silent, and vaudeville. The New Palace Theater maintained a full-week program with a sound feature and six acts of vaudeville. Newsreels were shown in every theater.

Mr. Mokan believed that local conditions demanded different types of entertainment. A more frequent change in entertainment was required in the smaller cities. In the three cities of over 100,000 population there were large numbers of transients, and hence it probably would be uneconomical to change the

program more than once a week. Continuous showings were possible in the larger cities, but were judged inadvisable in the smaller ones. Transportation conditions in the different cities necessitated special arrangements as to the time of exhibition. Not all the theaters were equipped with sound reproducing devices and it would be some time before sound pictures could be shown in them all. The size of the theater and its competitive position also had an influence upon the suitability of various types of entertainment. The difference in the types of population in the various cities was another factor bearing on the selection of pictures and other entertainment. Newton, for example, was the location of a large university; Mohawk was a highly industrialized center with an unusually large percentage of foreign-born citizens; Marsden was the county seat of an agricultural county.

Mokan Theaters, Incorporated, concluded that it should seek to secure managers who were able to analyze their communities so as to be able to make the most suitable selection of pictures and the best arrangement of playing dates. The typical chain theater manager, it was thought, was inclined to book pictures that he believed should attract people rather than those which actually would appeal in a particular neighborhood.

In addition to the care in booking, the company also desired the manager to develop the right kind of exploitation. The typical chain theater manager was seldom given the responsibility for exploitation; individual advertising campaigns were planned at the central office for all theaters in the chain. The central office provided ideas and other help for the guidance of the man in the local theater. A chain theater manager had to be able, however, to coordinate his theater with the home office program, and to make the best use of the help available to him.

Mr. Mokan realized that the independent type of manager who could be relied upon would be difficult to secure. While the stress of competition with chain theaters that enjoyed more favorable rentals had developed a number of excellent showmen in independent theaters, the independent manager commonly considered the chain theater manager as an automaton and was uninterested in such a position. He questioned the opportunity afforded for advancement in a chain and preferred a freedom from the hard and fast rules of central office control. The number of men of experience available for chain managers was, therefore, limited.

In the selection of managers for its chain of theaters, Mokan Theaters, Incorporated, decided that local management was of extreme importance. Final responsibility in judging what was best for a particular theater would rest with the local manager. The executives believed that without this responsibility, the manager would be unable to take a real interest in the operation of his theater. While he might be loyal and enthusiastic in his relation with the central office, yet it was impossible for him to develop his theater with policies and programs laid down by a central management.[2]

The corporation desired its managers to become local business men, active in the chamber of commerce and other local work. By so doing, they would be in a position to exercise the best judgment in arranging exploitation plans that would tie up with local business and would benefit thereby. The policy would not necessarily require that the local manager should be a former manager or resident of the city; in some instances, such a manager might be inadvisable and in every instance a new manager of ability should be able to build up a successful relationship in a new town.

In the opinion of the executives, a friendly relationship between the public and the theater was all-important in the exhibition of motion pictures and should be protected as far as possible. In order that this relationship might not be injured in the selection of entertainment and yet buying economies be effected, the corporation planned that the local manager should take an active part in the purchase of pictures for his theater.

New managers would be selected on the basis of their executive and showmanship ability. In the smaller cities, showmanship ability would be the major qualification as it was thought to be required to a greater extent in such cities. Candidates would be recruited from the "independent" type of theater managers.

COMMENTARY:[3] This case represents a situation somewhat different from that referred to in the case of the Publix Theaters Corporation. The chain was substantially smaller, and it was not likely that its growth would be so rapid proportionately as that of its larger competitor. It is to be noted further that the plan of control outlined was largely experimental and temporary. As time went by experience

[2] See *Motion Picture News*, April 6, 1929, p. 1029.

[3] See also commentary on Publix Theaters Corporation, page 522.

probably would indicate the desirability of exercising somewhat more rigid control than was exercised in this particular instance. It may be observed, however, that with a small theater chain it is far easier to obtain managers upon whom a large measure of responsibility may be placed than is the case with much larger organizations.

November, 1929 H. T. L.

Vulcan Theaters Corporation[1]

THEATER OPERATING COMPANY—MOTION PICTURES

Executive Training—*Establishing Theater Managers' Training School.* A company operating a large chain of motion picture theaters considered establishing a theater managers' training school, because of a shortage of available managers of the type required. Some executives opposed the plan in the belief that showmanship, which they considered the chief requisite for a theater manager, was the result of native ability and could not be formally taught. Since even without the school the company would be forced to train new managers in its theaters, the company decided to establish the school and to plan a course of training that would allow development of individuality.

(1930)

In January, 1930, the Vulcan Theaters Corporation considered the establishment of a theater managers' training school. In the past, managers for Vulcan theaters had been recruited from the company's own employees, from rival theater-operating companies, and from the motion picture industry in general. After 1928, at which time the company inaugurated a policy of rapid expansion, it became apparent that these sources were incapable of supplying a sufficient number of men of the proper type.[2] The establishment of a theater managers' training school was proposed as a remedy for this situation and as insurance against its further recurrence.

The Vulcan Theaters Corporation in 1930 owned and operated a national chain of about 400 theaters which ranged in class from de luxe first-run to small neighborhood houses. Vulcan theaters in general were well located and as a rule catered primarily to a medium- to high-class patronage. Control was of a strictly military type, radiating from a central office in New York through 5 division or circuit managers established in the more important key centers. Unit theater managers operated under the supervision of district managers, of whom there were 20, and who in turn

[1] Fictitious name.

[2] See Mokan Theaters, Incorporated, page 525.

were responsible to their respective division managers. Programs for all Vulcan theaters were arranged in the central office.

Weekly budgets, subdivided individually into their several classifications, were established by the New York office. Items listed in the budgets included film rentals; stage presentations; music; advertising and publicity; current house expenses, such as salaries, heat, light, and power; district and home office supervision; and fixed overhead charges. All advertising appropriations were flexible to the extent that balanced theater quotas were required but once in every three months. The Vulcan Theaters Corporation considered advertising to be one of the most important functions of its theater managers. Since it was practically impossible to plan local campaigns centrally, each theater manager was permitted to proceed within the limits of his budget to the best of his ability. A limited amount of supervision was exercised by the district office.

The shortage in the supply of available theater managers of the proper type came as a result of several factors. Since 1920, the motion picture industry had developed rapidly. Furthermore, integration had consolidated over 65% of the total box office income under the control of four large theater-operating companies, one of which was the Vulcan Theaters Corporation. These companies naturally found it advisable to install rigid control systems, which in turn required the services of theater managers who not only possessed the qualities of showmanship, but who were willing to conduct their assignments in accordance with company policy. Since these qualities could not be found in many prospective candidates derived from the customary sources of supply, the company more often retained the existing management of acquired theaters despite the tendency on the part of such managers to become disinterested in their work and to oppose the use of a rigid control system.

The proponents of a managerial training school emphasized the importance of theater managers because it was through them that the organization came in direct contact with the public. In a training school, prospective managers would be under close observation; hence judgment could be formed as to their capabilities, personalities, and habits. Before a manager was placed in charge of expensive theatrical equipment, was made responsible for funds, or was placed in a position to influence public goodwill,

the corporation would know whether or not he was capable of assuming these responsibilities. Furthermore, the school should attract a steady supply of young men of promise to the company.

Several executives with long experience in the show business opposed the establishment of a managers' training school. It was their contention that showmanship could not be formally taught. In their experience they had found that good showmen were those gifted individuals whose native ability enabled them to sense entertainment values and successful methods of exploitation. Those who had been unusually successful in the field of showmanship declared themselves to be without set principles or theories. They attributed their ability to a sort of sixth sense.

It also was maintained that the practical side of showmanship could not be acquired theoretically; that only experience could impart the necessary knowledge. Furthermore, because methods of showmanship changed frequently, theories based on present and past practices would be of little value in judging problems of the future. Those opposed to the school favored training future managers in theaters wherein they would come into contact with actual problems of operation.

Despite the adverse criticism, a majority of the company's executives favored the establishment of a school. In their opinion, the probable benefits of the plan more than compensated for its weaknesses. In the first place, without a school the company would be forced to train managers in its theaters. While this method might produce an immediate practical knowledge of some of the more common problems of theater operation, it would not cover the broad field of showmanship. A candidate selected as a possible theater manager, unless he possessed previous experience, would probably be assigned as assistant manager in the theater selected for his training. While some of the managers of Vulcan theaters were excellent showmen, many of them would be poor teachers. Furthermore, those possessing the capacity to teach probably would have neither the time nor the inclination to assist in training a student. Training under such a system would be spasmodic and not uniform. Each manager, for example, might emphasize his favorite phase of theater operation to the exclusion of others, regardless of their importance.

Training of this type was further limited by the type of theater to which a prospective manager would be assigned. Many of

the smaller theaters did not maintain orchestras and stage shows such as were presented by the de luxe theaters. The de luxe theaters, on the other hand, did not furnish the opportunity for close contact with theater patrons. It would be difficult without great expense to transfer students to and from the various theaters in order to provide them with experience in the management of all types of theaters.

Many of the executives believed that the proposed school, in addition to solving these difficulties, provided the most comprehensive form of training possible. The curriculum for the school could be studied carefully and arranged to include any desired subject. Each subject could be allocated the amount of time that its importance warranted. By combining the use of lectures, textbooks, problems, written reports, and some supervised work in theaters, all types of subjects could be covered effectively.

The proposed school could be located in New York City, the center of showmanship of the United States. Thus the students would benefit by observing the methods of America's leading showmen and by personal contact with the company's best showmen. In New York, students would find available every type of theater and every class of showman.

The school was further favored because it would provide instruction on certain phases of theater operation which ordinarily could not be gained through practical experience. A manager actually engaged in the operation of a theater might acquire such information only at the expense of great effort either by delving into books or by tedious inquiry. For example, gaining a knowledge of theatrical mechanical equipment was subject to several limitations. The cooling, heating, ventilating, projection, and sound reproduction equipment all required the supervision of the theater manager, but in many instances were of such a complicated nature that no amount of ordinary observation would teach anything about their construction or operation. Furthermore, union regulations restricted any attempt that might be made to learn about such equipment. A regulation of the projectionists' union, for instance, prohibited the presence of the manager in the projection room. Motion picture theater law was another field in which few men would acquire knowledge while engaged in the tasks of theater operation, unless they were actually confronted with legal difficulties.

Enthusiasm and the ability to inspire others with enthusiasm were among the principal requisites for all successful showmanship. While a few exceptional individuals could stir enthusiasm within themselves and maintain it, a majority acquired it by contact with others interested in the same type of work. It was believed that a group of new men trained at a school under the direction and inspiration of a combination showman and teacher could be fired with more enthusiasm for their work than they could acquire in the same length of time in any other manner. The existence of the school also would act as an incentive to the older managers to keep abreast of the latest developments.

In whatever manner the proposed school might select its men, it was believed that the selection should extend beyond the motion picture industry. It would be possible to accept for the school young men possessing considerable promise, even though they did not have any theater experience. Men could be drawn from the employees of the company, from colleges and high schools, and from other lines of business. Many young men, knowing that they would receive proper training, would be attracted to the school.

Although no definite plans had been formed, it was suggested that should the company decide to establish a school, considerable helpful information might be derived from the Publix Theaters Corporation. The latter company had organized a theater managers' training school which from outward evidence had produced satisfactory results.

The Publix Theater Managers Training School[3] was established in 1925 to develop an adequate number of well trained managers for Publix theaters. The school was placed in charge of one of the company's experienced employees. Lecturers were drawn from the executives of all branches of the Paramount Famous Lasky Corporation. The first group of students was recruited from various sources, including industries, colleges, and a few outstanding company employees. Catalogues were distributed to schools, colleges, and industries as a means of

[3] The following information regarding the Publix Theater Managers Training School has been compiled from published sources, including *Motion Picture Theater Management*, by Harold B. Franklin; *Transactions of the Society of Motion Picture Engineers*, Volume 25; *Motion Picture News*, October 12 and 26, 1929; and various issues of the *Film Daily* and *Variety*.

interesting prospective candidates. Selection was determined by such factors as education, experience, intelligence, physique, personality, a natural aptitude for music, advertising, art and stage craft, and a desire to make theater management a life occupation. Outstanding company employees were particularly desirable, because of their experience in theater operation and the resultant favorable effect their enrollment in the school might have on other junior employees. The 1929 class was recruited exclusively from the ranks of the company and its parent organization, the Paramount Famous Lasky Corporation.

The first course conducted by the Publix Theater Managers Training School was in session for six months. In addition to a tuition fee, students were required to pay all their personal expenses. In 1929, the tuition fee was discontinued. Each student received $25 a week during his enrollment, and the duration of the course was reduced to three months.

The method of instruction varied. Upon entering the school, students were first acquainted briefly with the more general aspects of the motion picture industry, especially the interrelation of production, distribution, and exhibition. In the classroom they were presented with the problems involved in the promotion, building, and operation of a theater. They were familiarized with accounting and budgetary control; with all forms of mechanical equipment, including sound projection; ventilation and lighting technique; orchestral and organ music; stage presentations; program building; and with such executive duties as employment, supervision, discipline, and training. Particular emphasis was placed on advertising and exploitation, under which headings the following items, among others, were discussed: the mechanics of newspaper advertising, billboards, and window display; national campaign, tie-up, news story, and accessory advertising; and community propaganda.

To provide a proper application of the acquired theory, students were assigned to different departments in the company's various New York theaters and on several occasions they had been taken to Atlanta, Georgia, where they were provided with a knowledge of the operating problems peculiar to the theaters in that section of the country. While assigned to theaters, students were given an opportunity to perform certain functions and to supervise others. The performance check was indicative

of the scope of this phase of the course. A typical performance check was as follows:

Screen

(1) Blank screen. (2) Dirty screen. (3) Jerky or bulging screen. (4) Defective masking of the screen. (5) Unsteady picture. (6) Poor definition. (7) Travel ghost. (8) Flicker. (9) Poor illumination. (10) Misframing. (11) Faulty change-over. (12) Unnatural speed. (13) Distortion. (14) Dirty aperture. (15) Punch marks, rain, scratches, thumb-prints, warped film, oil spots. (16) Slides off line. (17) Cracked or smeared slides. (18) Poor slide change-over. (19) Noisy projector. (20) Flipper late or misplaced. (21) Sound track visible on screen. (22) Glare spots on screen. (23) Spread light on apron.

Sound (Mechanical)

(1) Fuzzy sound. (2) Flutter. (3) Ground noise. (4) Echo. (5) Improper musical introductions to sound shorts. (6) Needle noise. (7) Sound and picture out of synchronization. (8) Faulty synchronization change-over. (9) Volume too low or too high. (10) Jerky fader change. (11) Noisy moving of horns. (12) Horns moved into position too late. (13) Loose units in horns. (14) Failure to remedy "pockets" in "dead spots." (15) Improper framing of the transvox over silent screen. (16) Motor generator or fan noises.

Stage Mechanics

(1) Jerking curtains. (2) Fouling of drops. (3) Failure to mask battens. (4) Noisy sheaves. (5) Improper "live" or "dead trim." (6) Unsteady stage braces. (7) Improper off-stage masking. (8) Noisy traveler. (9) Noisy lowering of drops. (10) Off-stage noise. (11) Ripped scenery. (12) Set off center line. (13) Platforms not rigid. (14) Improper storage of scenery. (15) Visible wires. (16) Borders not trimmed. (17) Failure of draw curtains to meet. (18) Failure to mask towers. (19) Too rapid or too slow lowering and raising of curtains and drops. (20) Dirty stage apron.

Pit—Orchestra

(1) Noisy entrance and exit. (2) Loud and discordant tuning. (3) Untimely elevator. (4) Lack of proper "elevator" music. (5) Wrong levels of elevator. (6) Orchestra out of tune. (7) Lack of uniformity in bowing of violins. (8) Wrong combination of instruments. (9) Ineffective speedometer signals. (10) Untidy music racks. (11) Talking in the pit. (12) Tardy cueing of newsreels clip. (13) Cueing to the newsreels improperly timed. (14) Poor arrangements. (15) Inefficient use of mutes. (16) Selections too lengthy. (17) Leader's showmanship. (18) Glare from instruments. (19) Traps and sound effects. (20) Overplaying voice or picture. (21) Defective grouping of musicians.

Organ

(1) Organ lift untimely. (2) Improper color spot for selection. (3) Music on rack disorderly. (4) Personal appearance of organist. (5) Glare. (6) Organ out of key with orchestra on coordination. (7) Monotony of stops. (8) No music during trailers. (9) Organist improvising and not following the score. (10) Improper control of volume. (11) Improper selection of stops. (12) Improper selection of tempo during slide presentation. (13) Console dirty. (14) Cyphers. (15) Carelessly spotted. (16) Failure to catch direct cues. (17) Signals for change of slides not properly timed. (18) Organ solo too lengthy. (19) Failure to change selection after feature concluded. (20) Too long pauses before stage show or following presentation. (21) Light left burning.

Stage Performance

(1) Clumsy entrances and exits. (2) Faulty line work. (3) Dancers out of step. (4) Dancers out of tempo. (5) Line arrangement for size. (6) Crooked lines. (7) Costumes not clean. (8) Voices not loud enough. (9) Miscues. (10) Faulty make-up. (11) Properties incomplete. (12) Too many bows. (13) Numbers repeated too often. (14) Poor arrangement of units. (15) Omissions. (16) Unplanned encores. (17) Stalling. (18) Superfluous and unnecessary "ad-libbing." (19) Continuity disregarded. (20) Similarity of dance routines. (21) Lack of contrast of units. (22) Performers visible off stage. (23) Failure of master of ceremonies to sell an act. (24) Master of ceremonies' cues. (25) Gestures. (26) Poor diction. (27) Lack of variety in introductions. (28) Announcements made too soon before applause dies down. (29) Familiarity with audience overdone. (30) Failure to subordinate master of ceremonies to performer after introduction.

Stage Lighting

(1) Tardy or wrong size spot. (2) Over spread flood lighting. (3) Glare from shiny surfaces reflecting light. (4) Manipulation of dimmers. (5) Spotlight halo. (6) Ineffective choice of colors (gelatines). (7) Improper lighting on transparencies. (8) Lights behind scrims at improper time. (9) Failure to mask off-stage lighting equipment. (10) Cracked gelatines. (11) Burned out lamps. (12) Footlights unsheltered from balcony. (13) Spot reflection. (14) Bad contact at stage pockets. (15) Improper spotting of performers. (16) Effect machines at improper speed.

House Lighting

(1) Houselights late. (2) Picture houselighting too bright. (3) Lights bumped on or off. (4) Stray light from booth, house fixtures, etc. (5) Glare spots in auditorium. (6) Color combinations.

Throughout the course, the candidates were under the strictest observation. Those that did not show a natural aptitude for the show business were not encouraged to continue their training. Successful graduates were given positions at fair working salaries with an opportunity to practice under actual working conditions the lessons they learned in training. Usually they were assigned to assistant managerships.

The executives of the Vulcan Theaters Corporation objected to the Publix school chiefly because they believed the men whom it trained became stereotyped. They were unanimous in their belief that such education as produced managers lacking in individuality was inconsistent with one of the cardinal principles of good showmanship, and was too rigid for a nation-wide organization that must adapt theater managers to various conditions.

All were agreed, however, that a truly capable director could provide the necessary means to prevent a stereotyped form of training. Proponents of the school believed that one of the company's junior executives was well suited for the position of director. This individual was thirty-five years old, a college graduate with three years of pedagogical experience, four years of service with a large manufacturing company that had achieved considerable success with a training school, and five years of practical experience in all departments in the motion picture industry. He possessed a pleasant personality and the knack of inspiring all with whom he was associated.

Housing the school would not constitute a problem since space was available in a number of the company's New York buildings. It was suggested, however, that a group of vacant offices in the Vulcan Theater, the company's New York "show window," be converted into a well equipped training department. Such conversion would entail a few inexpensive alterations and the installation of some of the more important items of equipment.

Matters pertaining to the selection and the number of candidates, the organization of a curriculum, the granting of compensation to candidates during the period of training, and selection of the faculty had not been worked out in detail. The executives favoring the plan believed that such matters should be delegated to the appointed director. They did believe, however, that a committee should be appointed in an advisory capacity.

COMMENTARY: The problem before the Vulcan Theaters Corporation was that of meeting the need for an increased personnel resulting from the rapid expansion of the number of theaters controlled by the corporation. Several points of a more or less detailed nature may be noted in the case. In the course of study of the Publix Theater Managers Training School considerable emphasis was placed upon problems of advertising and other promotional efforts. Whether or not this policy was wise for the Vulcan Theaters Corporation depended largely upon the real purpose the company had in establishing the school. For certain types of employees, an extensive training of this type might not be necessary. Attention should also be directed to the company's recognition that a capable director was essential. If such a director was available, and if the objective of the course of training was clearly defined, it is believed that the policy of establishing such a school to meet the needs of this particular corporation was wise. The arguments that "showmanship cannot be taught" and that "gifted individuals with native ability" must constitute the main reliance of the company, are not new. Most large enterprises of the United States have learned, however, that a rigid course of training under a responsible person, results in an improvement in company morale and in giving to the employees an ability to perform their work with much greater efficiency. Motion picture companies might well profit by these examples.

It would appear that there are three distinct classes of persons for whom schools might be established. First, there are the junior employees in the theaters, consisting largely of men and women with rather detailed duties and very limited responsibilities. These persons are rarely called upon to execute anything which demands exercise of their own judgment. They constitute the working force of an organization, and it is by them that the public largely judges the quality of the service rendered. A school for this group should provide specific training to suit the needs of the group.

The second group consists of managers who presumably have rigid responsibilities and a wide opportunity for the exercise of individual judgment. These men require a larger vision of the task before them and of their relationship to the company as a whole and to the motion picture industry. They require a greater breadth of training, and a greater ability to grasp somewhat more complicated problems. In the event that the Vulcan Theaters Corporation wished to place the management of its theaters in charge of men who lacked the opportunity for incentive in dealing with such problems, the course of study as offered in the Publix Theater Managers Training School would not need to undergo any modification to serve the requirements of this group.

There is a third group for which a company might well provide a more general course of study than that required for theater managers and employees. In every large corporation there are many persons who look forward to a lifetime of service with their company. Although occupying quite modest positions, they hope to rise to positions of junior executives and perhaps even higher. Many corporations have found it desirable to offer to such ambitious employees an opportunity to gain a grasp of the business, not obtainable in the usual routine of the day's operations. The bigger problems of company policy, the relationships between this particular company and other companies, the relationships of their particular business to other businesses indirectly allied with them, such as banking,—these are all of interest to this third group. Many of them are interested in the general study of business, and welcome an opportunity for study. The experience of the American Institute of Banking furnishes an illustration of this practice. Something has been done in the motion picture industry by the Academy of Motion Picture Arts and Sciences. A few private schools, designed to meet the requirements of those interested in the motion picture field, have been established throughout the country.

The commentator believes that the motion picture industry is dependent upon an active, intelligent, ambitious personnel. Without such a personnel, the future of the industry would be very limited. It is believed further that in such centers as New York and Hollywood, greater effort might be directed toward providing the employees within the companies an opportunity to study the types of problems to which reference has just been made. No greater investment for the welfare of the industry could be made.

November, 1929 H. T. L.

Century Theater[1]

MOTION PICTURE THEATER

Merchandising—*Change in Entertainment Program Necessitated by Technical Developments and Competition.* Since its opening in 1920 a motion picture theater situated in the Broadway district of New York City had followed various policies of entertainment, including premiere showings of pictures, first runs of high-grade pictures, revival showings of popular films of the past, and screen repertory programs. In 1927, after the theater had become affiliated with a company operating a large chain of theaters, it was specializing on programs of distinctive entertainment, consisting largely of imported films. During the latter part of 1928, the introduction of sound pictures into the Broadway theaters caused the company to consider the advisability of a further change in entertainment policy, since it could not secure sound films from foreign producers.

(1928)

The Century Theater in New York City was located in the theatrical district a short distance from Broadway. In November, 1928, the managers of the theater were considering a change in entertainment policy.

In 1920, at the time of the Century Theater's opening, it was the intention of the owners to provide entertainment in the form of premiere showings of the motion pictures of various distributors. A premiere showing of a picture was the first exhibition of that picture to the public. The motion picture was supplemented by music furnished by a large orchestra and a vocalist. Price of admission was fixed at 50 cents for both matinee and evening showings. With a seating capacity of 500, the theater was small enough to serve a limited and distinguished patronage attracted by the discriminating taste exercised in the selection of entertainment. The audience usually included a large number of representatives of the theatrical profession, particularly those engaged in the production and distribution of motion pictures. About 1923, because of the development of the industry and the increasing number of

[1] Fictitious name.

theaters, the custom of announcing showings of picture plays with a premiere at the Century Theater was discontinued gradually by motion picture distributors, these premieres being held instead at theaters affiliated with the distributing companies.

In consequence of this new situation the program policy of the theater changed to one of selecting the best picture plays available. This policy was maintained for about two years, when larger theaters were built which were able to offer greater revenue to distributors, either on a percentage basis or in the form of higher rentals. At this time, the ownership of the Century Theater changed, and a new policy was placed in effect. During 1925, under the new management, it was the policy of the theater to present revival showings of the most popular films of the past. Revivals proved to be highly attractive, so much so that a number of the cheaper theaters in metropolitan New York followed the example of the Century Theater with such success that the latter was unable to continue the policy without losing its reputation with the public as an exhibitor of first-class entertainment.

Early in 1926, the owners of the Century Theater gave their support to the development of the Film Arts Guild, which had been organized by Mr. Symon Gould in 1925 to promote interest in the cinema art much as the Little Theater movement had in the art of the stage. Its main objective was the establishment of a circuit of little theaters where only the better films would be shown. Through an arrangement with the director of the Guild, the Century Theater was to receive assistance in the selection of its entertainment, and the benefit of publicity related to the Guild movement. Under the new policy, the screen repertory idea, which had been inaugurated about a year before by the Guild, was introduced, with an increase in weekly revenue of $3,000 over the average previously attained by the theater. The main feature of screen repertory was the revival of film classics. After this entertainment program had been in effect for several weeks, the Guild imported a famous German film which, after extensive editing and titling, was presented for its American premiere at a special subscription performance at the Century Theater. The film was a sensation and a repeat performance was necessary to accommodate the overflow. Interspersed with such outstanding foreign cinemas were first showings and revivals of unique films produced in America. Such pictures

included "The Great Train Robbery," the first superspecial made; Griffith's "Avenging Conscience," the first indication of the use of the psychological possibilities of the screen by objectification; and "Knee-Deep in Love," an abstract color film. The Guild was the first to focus particular attention on the abilities of an individual director by originating programs of one week's duration given over to the showing of one director's work. It also recognized the contribution of a particular actor by presenting a two weeks' program of films showing the actor in various roles. Total gross revenue for 1926 was approximately $250,000.

By reason of a change in ownership and management whereby the Century Theater became affiliated with a large chain of theaters located in the Atlantic seaboard states, the entertainment policy in 1927 reverted to the former policy of showing the best American films available, including wherever possible the first-run showings of the films produced by a large motion picture company for which the theater chain served as a distributing outlet. Gross revenue during 1927 approximated $210,000.

Late in 1927, a change in the management of the theater chain brought about a new policy in the entertainment program at the Century Theater. The chain executives believed that the Century Theater was sufficiently different from other theaters in the chain to warrant an independent policy of management. In relation to other theaters in the chain, the Century Theater was much smaller in size; it maintained a program without vaudeville; it drew its audience from an ever-changing public; and it did not share the common name of the chain. Under the new policy, the entertainment consisted largely of imported motion pictures. Special showings of European masterpieces became a regular part of the program. Such films attracted not only the screen devotee who appreciated the high quality of imported films but also a large number of the foreign population of the city who preferred films produced by directors and players of their own nationalities. In addition to the feature picture, the program included an overture by a smal orchestra, news events, a short subject, and a short comedy. The short subject was ordinarily the well-known and popular pictorial presentation of Aesop's Fables. With a long comedy, it was customary to omit the short subject in order not to exceed the two hours fixed as the length of a program.

The management of the Century Theater purchased its feature pictures from resident distributors of foreign producers on the basis of programs determined two weeks in advance of showing. The price was in almost every instance fixed as a percentage of box-office receipts over and above a guaranteed amount. This percentage was determined by bargain with the film importer. Complete records of past receipts over a period of years were utilized in determining the probable revenue to be derived by a feature picture of a particular type at a certain time of the year. It often happened that the showing of an important film in the Century Theater stimulated the purchase of the film by other theaters, a fact which was recognized by the importer in the determination of the percentage to be received from the Century Theater.

Changes in program were made on a weekly basis, the change taking place on Friday. On the basis of attendance at the Friday, Saturday and Sunday showings, a decision was reached as to the advisability of continuing the picture for an additional week or two weeks. The theater was open from 10:30 a.m. to 11:30 p.m. Admission prices were as follows: before 1 p.m., 35 cents; 1 p.m. to 6 p.m., 50 cents; after 6 p.m., 75 cents; Saturdays, Sundays, and holidays, 75 cents after 1 p.m.

During the latter part of 1928, the development of sound pictures led to the installation of sound equipment in nearly every theater in the Broadway district. Theater managers were convinced that the sound picture was more than a novelty, and that further development of the cinema art would encompass sound as an element of photographic presentation. All the large motion picture producing companies were announcing pictures with both sound and silent versions, but it was noticeable that the pictures originally intended for sound presentation were not well adapted to silent presentation. Further development of this new type of picture was expected. A possible decline in future patronage because of competition afforded by sound-equipped theaters caused the managers of the Century Theater to consider, in December, 1928, the wisdom of continuing the entertainment policy in effect.

None of the foreign producers were exporting sound films. It had always been difficult to maintain an entertainment policy of uniformly high quality feature films because of the limited number

EXHIBIT I

FILM IMPORTS INTO UNITED STATES, 1923–1927*

	1923		1924		1925		1926		1927†	
	Linear Ft.	Value	Linear Ft.	Value	Linear Ft.	Value	Linear Ft.	Value	Linear Ft.	Value
Argentina	12,500	$ 850	9,500	$ 1,300	4,500	$ 375	16,410	$ 680	5,695	$ 429
Australia	118,500	21,500	24,500	10,500	31,000	1,800	14,007	940	50,069	4,725
Austria	70,000	7,000	60,000	18,000	18,000	10,500	37,184	1,513	49,609	6,623
China	20,500	4,000	100,000	8,000	105,000	12,000	66,584	7,701	192,577	10,619
Denmark	55,000	3,000	23,000	1,000	70,000	4,000	50,728	2,551	21,853	13,912
Egypt	47,000	8,100	92,500	2,600	23,600	1,700	14,272	2,521	27,048	2,450
France	3,800,000	275,000	2,100,000	125,000	2,500,000	120,000	1,781,133	89,677	1,259,271	74,935
Germany	900,000	45,000	900,000	45,000	700,000	25,000	745,711	32,681	691,375	21,947
Italy	470,000	160,000	600,000	515,000	1,070,000	115,000	271,421	16,290	33,949	1,602
Japan	325,000	67,700	325,500	31,500	199,000	18,000	339,853	32,804	256,397	13,704
Russia	....	....	7,000	90	5,000	150	8,402	150	31,901	1,094
Sweden	90,000	20,000	70,000	5,000	98,000	5,500	57,058	2,863	100,406	6,901
United Kingdom	1,700,000	130,000	1,300,000	135,000	1,020,000	60,000	940,585	72,637	761,470	43,082

* Compiled from data published in *Film Year Book*, 1928. Figures cover only the larger importing countries. Value represents invoice, not royalty, values.

† Figures for 1927 cover first 9 months of the year.

of films imported, as shown in Exhibits 1 and 2. Only the larger foreign producers exported films and only those productions which were considered adapted to the American market were exported. This condition necessitated the occasional interspersion of an American film on the theater's programs.

EXHIBIT 2

FILM IMPORTS INTO UNITED STATES, SEPTEMBER, 1927 AND 1928*

Period	1927		1928	
	Linear Feet	Value	Linear Feet	Value
September	574,547	$ 36,000	581,000	$ 42,000
9 months ending September	....	366,000	....	402,000

* Source: United States Department of Commerce. Figures include both positive and negative film imports.

For some time, the Century Theater had been the only one in the city specializing on a program of distinctive entertainment. Early in November, 1928, a new theater was opened, at some distance from the Century Theater but within the Broadway district, which also specialized in unusual photoplays. It advertised as follows:

> Gilded Theaters and Theater Guilders—Obviously the two don't mix. Unique atmosphere . . . modernistic luxury . . . dignified unconventionality . . . distinctive programs . . . stimulus for the intellect . . . are what the members of the Theater Guild want.
>
> For those who like to play, there will be genuine authentic channels for self-expression; a ping-pong court, ballroom, bridge tables in salon intime, and a lounge where coffee, cigarettes, and other postprandial delights will be served gratis.
>
> TRULY THE ARISTOCRAT OF THE CINEMA

Also, the Film Arts Guild had announced tentative plans for a new theater to open early in 1929. It described its proposed theater as "The First 100% Cinema," "Films Distinctly Artistic," "Music-Ensemble à Moderne," "Presentations—Light—Color—Sound," "Quintessence of Cinema." Films to be presented on early programs were: Volster's "The Devil," "Life of Beethoven," "Moscow Today," "Rejuvenation" (Vownoff), "Celita, the Russian Caligari," "Nosferatu, the Vampire," by Murnau,

"Saada," first Egyptian film, Ibsen's "The Wild Duck," with Werner Kraus, Debate between H. G. Wells and Aldous Huxley (sound), "The Black Crossing" (African).

While gross revenue for the Century Theater in 1928 was equal to that of 1927, it was apparent that only first-class entertainment would insure satisfactory profits in 1929.

COMMENTARY: In essence this case presents a theater whose character was fundamentally changed by virtue of a change in the character of the neighborhood in which it was located. From a house offering premiere exhibitions, it became one in which pictures of distinctive merit were shown. It then turned to revivals of old pictures, next stressed imported pictures, and finally considered introducing talking pictures. Since most imported pictures were not talking pictures, this change obviously would have meant an abandonment, at least in part, of the showing of such foreign-made productions.

There was little probability that distinctive pictures could be shown at this theater. It was a direct competitor with the large Broadway houses. Theaters occupying high rental sites and providing every convenience for their patrons were able to charge advanced prices for admission and to exhibit pictures for extended runs. The Century Theater probably could neither charge the admission price nor obtain the number of patrons adequate to enable it to compete effectively in the purchase of distinctive pictures. The development of neighborhood theaters throughout New York City make it unlikely that a theater located as was the Century Theater could attract patrons for second- or third-run exhibitions even though the pictures had substantial merit.

It would appear, therefore, that the theater should have exhibited the best foreign silent pictures which it could obtain and seek to secure, at the best rental possible, those American productions which had proven their merit. Since there would probably always be a considerable number of people who preferred silent to sound pictures, and since practically every theater within the area upon which the Century Theater would draw was exhibiting sound pictures almost exclusively, it is possible that this theater could gain by exhibiting a program made up wholly of silent pictures, thereby offering a quite distinctive form of entertainment, a fact which might well be emphasized. It is probable, furthermore, that the theater had an advantage because of its appeal to persons, living or working within the immediate vicinity of the Broadway district, who were desirous of obtaining cinema entertainment at more moderate prices than those prevailing at the majority of the theaters within the Times Square area.

Even if the theater continued to show silent pictures, it might still be wise to wire for sound. If the theater were wired, it would be enabled to offer a musical accompaniment without the additional expense of an orchestra. It would also be in a position to offer sound pictures whenever the exigencies of the situation might require.

November, 1929 H. T. L.

Chain Theaters, Incorporated[1]

THEATER OPERATING COMPANY—MOTION PICTURES

Merchandising—*Change in Theater Program Caused by Musicians' Wage Demands.* A theater operated as one unit in a large chain showed a combination program of vaudeville and sound motion pictures. When the theater changed its number of daily performances from two to three, its musicians demanded a wage increase. Believing that such an increase was unwarranted, the operating company considered two alternatives: continuing its existing policy and defying the musicians' demands; or changing the program to one of motion pictures only and dismissing the orchestra.

(1929)

In July, 1929, the musicians of the Willamette Theater,[1] a unit of Chain Theaters, Incorporated, showing a combination program of vaudeville and sound motion pictures, demanded an increase in wages. Chain Theaters, Incorporated, was a subsidiary theater operating company of one of the largest motion picture corporations in the United States in 1929. Its organization comprised several hundred theaters located in the more important centers throughout the country. Because of the advent of sound pictures, the decline in vaudeville patronage, the competition from continuous-run motion picture theaters, and the resultant diminishing margin of profit, the Willamette Theater recently had changed its policy of showing two performances daily to one of showing three performances daily. Consequently, the orchestra, consisting of 20 union musicians, demanded a wage increase of $45 a man week. Music costs in the average motion picture theater approximated 14% of total operating expenses.[2]

Convinced that the extra daily performance did not warrant such an additional expense, the executives of Chain Theaters, Incorporated, considered two alternatives. Under the first, the Willamette Theater would continue with the new policy and openly defy the demands of the local musicians' union. The

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[1] Fictitious name.
[2] See Franklin, H. B., *Motion Picture Theater Management*, 1927.

second alternative called for a change of program to one of showing motion pictures only and a dismissal of the orchestra.

The Willamette Theater was well located in a highly competitive theatrical district in San Francisco, California. It had a seating capacity of approximately 3,000. While not palatial, it nevertheless was a first-class theater. The program comprised sound motion pictures of high quality, short subjects, and several vaudeville acts. Direct competition came principally from de luxe motion picture theaters, some of them showing both first-class films and stage performances, and others presenting motion pictures only. One competitor supplemented motion pictures with a few vaudeville acts, the quality of which was not comparable with that of acts booked by the Willamette Theater.

Although the musicians playing in the Willamette Theater had not threatened to strike, the executives of Chain Theaters, Incorporated, wished to be prepared for such an emergency. Those in favor of ignoring the demands of the musicians believed that the musicians would withdraw their proposal when they realized that the company would not acquiesce. This contention was supported by the favorable attitude that vaudeville artists had taken to the plan of three performances daily. It was further substantiated by the fact that the introduction of sound pictures had weakened the bargaining power of musicians in San Francisco and elsewhere.

On the other hand, musicians in various theaters throughout the country had struck because they had not been granted similar demands. None of the units in Chain Theaters, Incorporated, however, had been confronted with this situation. Although in a few instances local theatrical trades had followed musicians' strikes in sympathy, the American Federation of Musicians had remained neutral. The Federation, however, had raised a campaign fund of considerable size for the purpose of presenting to the public, through a series of advertisements in 800 newspapers, the value of music played by an orchestra of visible musicians as contrasted with mechanically recorded music.

If a strike were inevitable, the Willamette Theater would be compelled to hire nonunion musicians. Such action would be contrary to the long-established policy of Chain Theaters, Incorporated, of employing only union musicians, and might have a detrimental effect on some of the company's other theaters that

contemplated adopting a program policy of showing three performances daily. It was possible, furthermore, that the Willamette Theater might suffer from the propaganda resulting from a labor dispute. The strength of this argument, however, was reduced considerably because of the rather indifferent attitude assumed by the Californian public toward union labor.

As the second alternative, the general manager proposed that the Willamette Theater discontinue vaudeville, dispense with its musicians, and adopt a complete sound motion picture program. The orchestra was not under a long-term contract and could be released on two weeks' notice. In addition to the fact that expenses would be decreased, this policy offered several advantages. In the first place, partly because of the popularity of sound pictures, and the scarcity of high-quality vaudeville acts available at reasonable prices, the entertainment policy of the company, with but few exceptions, had been changed. Whereas originally Chain Theaters, Incorporated, had been primarily a vaudeville circuit, in some cases showing motion pictures as added attractions, in 1929, in all but a few of its theaters, motion pictures either were the principal attractions or were at least of importance equal to that of the vaudeville acts. Furthermore, a producing unit affiliated with the company had scheduled a number of costly motion pictures for release during 1929 and 1930, and contracts had been made for the outstanding product of certain rival producers, with the result that the risk of an inadequate supply of high-quality films had been minimized.

Another executive agreed with the general manager that for the present a program made up entirely of motion pictures would produce satisfactory results. He recognized the drawing power of synchronized pictures and the prevailing lack of interest in vaudeville. He was inclined to believe, however, that once sound pictures had become as common as the silent ones, there would be a reaction toward the legitimate stage, orchestras, and stage presentations, especially in the larger theaters. As illustrations he cited several theaters which, after having tried the plan of showing programs which consisted of motion pictures only, had changed their policy to that of presenting a combination of pictures and vaudeville with an orchestra.

A third executive opposed a straight motion picture program. In his opinion, the Willamette Theater was recognized locally as

the outstanding high-class vaudeville theater. Its status as such was of decided importance in competition. He was not unmindful of the apparent decline in the popularity of vaudeville, but he believed that the public already had shown its aversion to synchronized vaudeville skits and soon would return its patronage to legitimate vaudeville. Furthermore, he believed that the Willamette Theater, unless it presented motion pictures all of which were of outstanding box office values, would find it difficult to compete steadily with de luxe theaters showing both motion pictures and stage presentations.

COMMENTARY: The primary issue in this case deals with the character of the program to be shown, and not with the attitude of the company toward union employees.

It may be noted, however, that the policy of the executives was apparently somewhat shortsighted, unless, as the general manager believed, the musicians' union would not maintain its position when it realized that the company would not acquiesce in its demands. The vaudeville actors employed by the theater were also unionized. It would appear that they were willing to compromise with the management. This willingness indicates that they were not in sympathy with the musicians' attitude. It further suggests that they fully realized that fundamental conditions were undergoing a change, and that they could not expect to maintain their former position. The American Federation of Musicians was apparently of the same opinion. For the musicians to insist upon full compliance with their demands, therefore, would appear unwise. The decision of the company to show three performances a day and perhaps to operate a continuous program confined to motion pictures was doubtless wise. It solved the problem of the additional wages demanded by the musicians. It also eliminated the expense for vaudeville actors. There probably would be some increase in film rental cost, since the management proposed to run high-grade pictures exclusively, and since, if the new policy were a success, distributors would insist upon a higher price than formerly for any film.

It may also be noted that the change from vaudeville was not a radical one for this company, since pictures were the major attraction at most of the company's theaters. Perhaps the real question was whether or not the decline in the demand for vaudeville was permanent. It is to be seriously doubted whether the belief expressed by one executive that there would be a reaction in public favor toward the legitimate theater to the detriment of the motion picture houses was well founded. Whether such reaction would take place was problematical. Further-

more, past experience would indicate that even though this shift should materialize, motion picture patronage would not be seriously affected. The presentation of synchronized vaudeville, suggested in the case as a possible solution, would probably not help the situation. Exhibitors who had resorted to this policy had not met with great public favor. It was argued that the Willamette Theater was recognized as a high-grade vaudeville house, and should continue to show vaudeville. Two issues arise here. First, would the public want vaudeville of any calibre? If not, the fact that the Willamette Theater had a reputation as a high-grade vaudeville house would be of no particular help to it. Second, even were there to be a continuous demand for high-grade vaudeville, the evidence in the case seems to indicate that there was real danger that a continual supply of new talent could not be obtained in numbers large enough to meet the requirements of this theater. Such being the facts, it would appear undesirable for this company to attempt to retain its character as a distinctly vaudeville house.

It may be noted that a number of the de luxe houses, with which the Willamette Theater was competitive, were not houses with vaudeville or presentation acts. It would appear, therefore, that such acts were not necessary to success. The principal argument seems to imply that the real usefulness of a motion picture house is dependent upon the character of its pictures, and that only when pictures are poor is it necessary to bolster up the program with some other device.

March, 1930 H. T. L.

BOYLSTON THEATER[1]

MOTION PICTURE THEATER

INSURANCE—*Basis of Estimating Use and Occupancy Insurance.* A motion picture theater was asked by an insurance company to renew its use and occupancy insurance for complete coverage on the basis of the average receipts less the expenses that ceased with suspension of operation. The treasurer of the theater, however, since he considered a loss in profits because of business interruption a part of the normal business risk in theatrical exhibition, believed it unnecessary to protect the theater from such loss by use and occupancy insurance. The policy was renewed, therefore, at a figure which did not provide against loss of net profits.

(1928)

The Boylston Theater, one of the larger theaters in Boston, with a seating capacity of approximately 2,000, was located within the shopping district of the city. The theater was built in 1924 as one of a chain of New England theaters controlled by a large motion picture producing and distributing company. Its program consisted of vaudeville, an organ solo, news events, a comedy, and a feature picture. Only first-run pictures were exhibited. In July, 1928, the theater operating corporation was advised by its insurance counsel that the existing use and occupancy insurance would expire within a short time.[2] The insurance agency, Jordan, Read & Company[1] of Boston, recommended that the existing insurance of $200,000 be replaced by new insurance with more adequate coverage. In addition to use and occupancy insurance theaters might also be protected from loss through the following special policies: damage to building and immovable contents by fire; damage to contents (including organ) from fire, except as originating and confined to projection booth; damage to contents of booth; liability to persons other than employees; workmen's compensation insurance; steam boiler insurance; electrical machinery insurance; refrigeration plant insurance;

[1] Fictitious name.
[2] For a description of a use and occupancy policy see Montgomery, R. H., *Financial Handbook*, p. 678.

sprinkler leakage; earthquake; and windstorm and tornado. Theaters could also bond those employees handling cash. Following is a uniform standard policy for use and occupancy insurance.

UNIFORM STANDARD NEW ENGLAND **FORM NO. 705**
(10–26)

BUSINESS INTERRUPTION INDEMNITY
(Use and Occupancy Insurance)

(FOR MERCANTILE OR NON-MANUFACTURING RISKS IN STEADY OPERATION "STRAIGHT U. & O.")

(PER DIEM LIMIT)

The following, subject to the conditions and provisions **printed on the back hereof,** is attached to and forms part of Policy No.
of the

Name of insurance company
issued at its Agency. Dated 19

$ On the Use and Occupancy of the property described below:
The conditions of this contract are that if the building situated and occupied as
and/or machinery and/or equipment contained therein be destroyed or damaged by fire occurring during the term of this policy so as to necessitate a total or partial suspension of business, this Company shall be liable under this policy for the actual loss sustained consisting of:

I. Net profits on the business which is thereby prevented;
II. Such fixed charges and expenses as must necessarily continue during a total or partial suspension of business, to the extent only that such fixed charges and expenses would have been earned had no fire occurred;
III. Such expenses as are necessarily incurred for the purpose of reducing the loss under this policy; for not exceeding such length of time, commencing with the date of the fire and not limited by the date of expiration of this policy, as shall be required with the exercise of due diligence and despatch to rebuild, repair or replace such part of said building and machinery and equipment
as may be destroyed or damaged subject to the following conditions and limits, to wit:

Total Suspension Clause: The per diem liability under this policy during the time of total suspension of business of all the properties described herein shall be limited to the "Actual Loss Sustained," not exceeding 1/300 of the amount of this policy for each business day of such suspension, except that in the case of business being operated on Sundays and/or holidays, the said per diem liability shall not exceed 1/365 of the amount of this policy for each business day of suspension, due consideration in either case being given to the experience of the business before the fire and the probable experience thereafter.

Partial Suspension Clause: The per diem liability under this policy during the time of a partial suspension of business shall be limited to the "Actual Loss Sustained," not exceeding that proportion of the per diem liability that would have been incurred by a total suspension of business which the actual per diem loss sustained, during the time of such partial suspension, bears to the per diem loss which would have been sustained by a total suspension of business, for the same time, of all properties described herein, due consideration being given to the experience of the business before the fire and the probable experience thereafter.

It is a condition of this insurance that the insured shall not be entitled to compensation on account of loss which may be occasioned by any ordinance or law regulating or prohibiting construction or repair of buildings, or by the suspension, lapse or cancellation of any license or lease, or for any other remote loss.

It is a condition of this insurance that as soon as practicable after any loss, the insured shall resume complete or partial operation of the property herein described

and shall make use of other property, if obtainable, if by so doing the amount of loss hereunder will be reduced, and in the event of the loss being so reduced such reduction shall be taken into account in arriving at the amount of the loss hereunder.

It is a condition of this insurance that surplus machinery or duplicate parts thereof, equipment or supplies, and (if this policy covers liability for suspension of business due to damage to or destruction of stock) surplus or reserve stock, which may be owned, controlled or used by the insured, shall in the event of loss, be used in placing the property in condition for continuing or resuming business.

It is a condition of this insurance if this policy covers liability for suspension of business due to damage to or destruction of building, machinery and equipment only, that this Company shall not be liable for any loss due to damage to or destruction of stock.

THE CONDITIONS AND PROVISIONS PRINTED ON THE BACK OF THIS FORM ARE HEREBY REFERRED TO AND MADE A PART HEREOF.

.... Agent.

For other provisions see reverse side of this form.

Note:—The description should clearly indicate the buildings, the use and occupancy of which it is intended to cover.

Note:—If liability for suspension of business due to damage to or destruction of STOCK is to be included insert the words "and/or stock" in both spaces after the word "equipment" in the first paragraph.

Note:—Usual clauses regarding alterations and repairs, hours of operation and permission for devices and hazards may be added as required or permitted by local rules.

Conditions and Provisions referred to in and made a part of this form (No. 705).

It is a condition of this insurance that in case the insured and this Company are unable to agree as to the time necessary to rebuild, repair or replace the described property, and/or the value of the subject of this insurance, and/or the amount of loss thereon the same shall be determined by appraisal in the manner provided by this policy, the provisions of which policy shall govern in all matters pertaining to this insurance except as herein otherwise provided.

The liability hereunder shall not exceed the amount of insurance by this policy, nor a greater proportion of any loss than the insurance hereunder shall bear to all insurance, whether valid or not, and whether collectible or not, covering in any manner the loss insured against by this policy.

In the event of the insurance hereunder being reduced by payment of loss, such reduction shall apply only to the amount of the policy, the daily limit of liability being unaffected thereby.

Other insurance permitted.

Lightning Clause: Except as provided in the Electrical Exemption Clause below, this policy shall cover use and occupancy loss caused by lightning (meaning thereby the commonly accepted use of the term lightning, and in no case to include loss or damage by cyclone, tornado or windstorm) not exceeding the sum insured, nor the interest of the insured in the property, subject to the terms and conditions of this form and the policy to which it is attached. Provided, however, if there shall be any other use and occupancy insurance on said property, this Company shall be liable only pro rata with such other insurance for any use and occupancy loss by lightning, whether such other insurance be against loss by lightning or not.

Electrical Exemption Clause: It is a special condition of this policy that this company shall not be liable for any use and occupancy loss resulting from any electrical injury, disturbance or damage to dynamos, exciters, lamps, switches, motors or other electrical appliances or devices whether from artificial or natural causes, unless fire ensues, and then only for such use and occupancy loss as may be caused by such ensuing fire; this limitation to be operative notwithstanding any provision to the contrary in the lightning clause (if any) attached.

Definitions:

The word **"day"** however modified, wherever used in this contract, shall be held to cover a period of twenty-four hours.

The insurance agency called the attention of the treasurer of the Boylston Theater to the fact that inadequate coverage would result in fractional reimbursement for any loss that might occur through a full or partial suspension of exhibitions because of fire.[3] It was suggested that the agency be furnished a record of past receipts and expenses in order that adequate coverage might be determined.

Weekly box office receipts for the preceding three months were listed as follows:

April 4	$13,400	May 2	$16,300	June 6	$17,500
11	15,900	9	17,800	13	22,000
18	14,200	16	16,500	20	20,000
25	16,400	23	14,600	27	18,500
		30	18,100		

The period was considered sufficiently typical to serve in determining the average weekly gross receipts. Fluctuations in box office revenue occurred in this period because the weekly entertainment varied in popularity, because of weather changes, and because of Lent.[4]

The theater's expenses included film rentals, vaudeville costs, salaries, interest on indebtedness, taxes, depreciation, heat, light, advertising, and miscellaneous operating expenses. Of these expenses, only those for film rentals, vaudeville, insurance, heat, and light were contingent upon operation. The degree to which they could be eliminated during business interruption depended, however, upon the length of the period of suspension and the nature of the existing salary and film contracts. In the event of full suspension for an entire week or longer, the vaudeville cost would be entirely eliminated. This expense was approximately $1,500 per week. It was estimated that under existing contracts a reduction, in part, of film rentals, averaging about $2,000 per week, the actual amount varying with the particular film, could be effected if the theater were closed for the week in which the film was to be exhibited. Electricity expense would be considerably reduced during any interruption of exhibition of a day or

[3] "It must be borne in mind that the company's per diem liability is fixed, and only the proportion of this liability which the decrease in production or business bears to full production (an average of the actual full production or business) is collectible. Therefore, if the insured has failed to ask the company to assume an adequate amount of liability, he cannot expect to be reimbursed on the basis of full coverage." Montgomery, R. H. *Financial Handbook*, p. 676.

[4] Industries of seasonal production commonly carry use and occupancy insurance with indemnities adjusted for particular periods in which the liability of greater loss is present.

longer. Advertising, salaries, and miscellaneous operating expenses would be decreased if the period of suspension were sufficiently long.

In determining use and occupancy coverage the treasurer considered $3,750, including $2,000 for film rental, $1,500 for vaudeville and soloist costs, and $250 for heat and light, to be the amount of weekly expense that could be avoided during business suspension and for which no insurance would be necessary. Of the average weekly gross receipts of $17,050, there remained, therefore, a net liability of weekly loss through business interruption of $13,300. This liability for the entire year would total $691,600, and the insurance agency recommended a policy of that amount. From this amount, a per diem liability would be fixed at 1/365 of the annual liability of $691,600. The premium on the policy was at the rate of 70% of the 80% reduced rate for the building and approximated an annual payment of $1,350.

With adequate coverage, the insurance agency would be in a position to reimburse the theater in full per diem liability for all claims for losses in anticipated revenue, in accordance with the provisions of the policy, due consideration being given to the experience before the fire and the probable experiences thereafter.

The treasurer questioned the practicability of coverin the theater with use and occupancy insurance to the amount of total gross receipts less the amount of expense that might be avoided during suspension. In his opinion, that proportion of gross receipts which represented profits to the corporation constituted a liability to loss of a different nature from that proportion of gross receipts which represented a return of fixed expense. Inasmuch as a loss in profits because of business interruption merely decreased the annual addition to surplus and was quite similar to the normal business risk in theatrical exhibition, the treasurer considered it unnecessary to protect the theater from such a loss by use and occupancy coverage. Sound theatrical management required close attention to expense and, in his opinion, a reduction in the outlay for insurance presented such an opportunity.

The treasurer estimated that approximately 10% of the weekly gross receipts represented normal profits available for surplus and dividends. He suggested, therefore, a further deduction of $1,700 from the weekly loss through business interruption,

thus leaving $11,600 as the average weekly income to be protected by business interruption insurance. The total coverage would then be 52 times $11,600 or $603,200, for which he requested a policy in the amount of $600,000.

The insurance agency explained that, in so far as the insurance was concerned, the loss of profits was not essentially different from the loss of expense, and the treasurer was advised, therefore, that if insurance were not carried for the full amount, or $691,600, in case of a claim made as the result of business interruption, the insurance companies could pay only $^{600}/_{691}$, or approximately six-sevenths of the actual loss sustained. A new policy was prepared on the basis of $600,000, a partial coverage, because the treasurer believed that amount of insurance was sufficient.

Commentary: This case illustrates the use of a form of insurance which has become increasingly important to theater managers. The insurance company was quite correct in its statement that use and occupancy insurance under the standard policies then in use covered total gross receipts less the amount of expense which might be avoided during suspension. This interpretation obviously included a figure for net earnings.

On the other hand, the treasurer of the company was correct in his opinion that the proportion of gross receipts which represented profits to the corporation constituted a liability to loss of a different character from that proportion of the gross receipts which represented a return for fixed expense. Failure to secure a net earnings figure may prove embarrassing to a theater, but certainly is not likely to endanger its existence as is a failure to earn a sum sufficient to cover fixed charges. On any logical ground, therefore, it would appear that if the treasurer of this theater wished to obtain a policy which would cover only those charges which would continue in the event of suspension, it should be possible for him to obtain such a coverage.

Furthermore, if the treasurer of this theater was in a position in which he could do so and was sufficiently desirous of doing so, it is quite probable that he could have found an insurance company ready to write the form of policy he desired. It should be noted, however, that the usual form of profit insurance policy would not in any way meet the particular desires of the treasurer of the Boylston Theater.

A question might be raised as to whether or not, from the point of view of good business policy, the request of the treasurer was well founded, but since this is not a major issue in the case it will not be discussed here.

November, 1929 H. T. L.

Boston Theaters

MOTION PICTURE THEATERS

Terms of Sale—*Distributor Protection for Exhibitors.* It was the general practice in the motion picture industry for an exhibitor to secure from a distributor protection for the pictures purchased, in the form of an agreement by the distributor not to allow the picture to be shown in certain other theaters in that operating zone within a prescribed period of time. Since there was no uniformity in the length of time of such protection, a Boston theater manager proposed that the exchanges in this city standardize the amount of protection granted for each run of a picture. Exchange managers, however, declared this plan impracticable, stating that, since protection was a bargaining factor between distributors and exhibitors, the large theater chains with strong buying power would always be able to secure special protection, regardless of any local plan of uniformity.

(1928)

In 1928 it was the general practice in the motion picture industry for an exhibitor, in buying a picture, to secure from the distributor protection against certain other theaters within his operating zone in the form of an agreement on the part of the distributor not to permit that picture to be shown by such theaters until a prescribed time had elapsed. There was, however, no uniformity in the length of time of such protection granted by distributors. As a result, a complicated situation had arisen which constituted a serious problem to distributors and exhibitors. The manager of a motion picture theater in Metropolitan Boston sought to work out uniform periods of protection and a uniform method of granting protection for that city. Metropolitan Boston included the outlying towns and suburbs within 15 miles from the geographical center of the city.

The theaters which usually were the first in their zones to show new pictures were commonly called "first-run theaters." Those theaters which customarily were the second in their zones to show pictures were known as "second-run theaters." In like manner those theaters which showed pictures third, fourth, or fifth in their zones were classed as "third-," "fourth-," or "fifth-run theaters." While each theater was generally classified according

to the run of pictures it usually showed, many theaters often bought and showed other runs.

The problems arising out of protection difficulties were acute in cities other than Boston.

Early in 1928 the Detroit Film Board of Trade, an organization of exchange managers, perfected a uniform zoning plan for that city. Zone 1 was designated for exhibitors displaying first-run pictures only, who were to be given 28 days' protection over second runs of the same pictures. Zone 2 contained theaters which showed second-run pictures, and those theaters were to receive seven days' protection over theaters which showed the same pictures as third-run.[1]

In Cleveland there were, in 1928, 13 theaters which showed first-run pictures and 118 theaters which showed subsequent-run pictures. Loew's, Incorporated, operator of a nation-wide chain of theaters, had virtual control of the first- and second-run theaters except for a few operated by the Keith-Albee Orpheum Circuit. The first-run theaters operated by Loew's, Incorporated, were receiving 56 days' protection over second runs. Subsequent-run theaters then declared a buying strike, demanding that the granting of such lengthy protection be abolished. The strike was settled by a compromise providing for a protection period of 42 days between first-run theaters and subsequent-run theaters.[2]

In New Orleans in 1928 some first-run theaters were enjoying 60 days' protection. In the past some of them had received as much as 90 days' protection.

The West Coast Theaters, Incorporated, which controlled a large number of theaters on the Pacific Coast, was trying to arrange, in 1928, a general plan of protection which would provide for as much as nine months' protection between the first-run theaters in metropolitan cities and theaters charging less than 20 cents admission. Several distributors agreed to grant the protection demanded by the company.[3] The United States Department of Justice in 1928 took action against the West Coast Theaters, Incorporated, and others on the grounds that this general plan of protection was in restraint of trade.[4]

[1] See *Exhibitors Herald and Moving Picture World*, April 21, 1928.

[2] See *Motion Picture News*, March 31, 1928.

[3] *Film Daily*, June 29, 1928.

[4] See action filed in the District Court of the United States for the Southern District of California, Southern Division, by the United States Department of Justice in 1928 against West Coast Theaters, Incorporated, et al.

A large part of the value of a motion picture to an exhibitor depended upon its newness and timeliness. Immediately after its release a picture usually brought a much higher price than it did later. Theaters which bought pictures on the understanding that they could not show the pictures until certain other theaters had done so usually received lower prices than did the theaters that bought newly released pictures for first runs. Each exhibitor usually had a fixed scale of admission prices for his theater, and as a result did not charge a higher price for a new picture than for an older one. An exhibitor would profit from the showing of a new picture by the increase in patronage due to the larger number of people interested in seeing the picture.

The first-run theaters, therefore, found it important to bar subsequent-run theaters in their zones from showing the same pictures immediately after they had been shown at the first-run theaters, and thus drawing the attendance of many people who otherwise would have attended the first-run theaters. They accomplished this object by obtaining agreements from the distributors that the latter would not contract to deliver prints of pictures shown by the first-run theaters to any other theaters in the same zones until a specified number of days or weeks had elapsed after such showing. Further to protect the first-run theaters from the lower priced subsequent-run theaters, the Standard Exhibition Contract used by all distributors provided that no theater having purchased a picture for a specified run could advertise that picture during any prior run of that picture in the same zone. This provision was not adhered to strictly, however. The second- or third-run theaters which were subject to the protection granted to first-run theaters were at all times anxious to shorten that protection period so that the pictures shown by them would be a little newer. The first-run and other theaters enjoying protection against subsequent-run theaters always sought to increase the length of the protection period granted them by distributors.

In 1928 there were 87 motion picture theaters[5] in Metropolitan Boston. About eight of these were first-run theaters, and about 20 were second-run theaters. When the productions for a new season were announced by a distributor, the salesmen of that

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[5] *Film Daily Yearbook*, 1928.

distributor's Boston exchange, in an attempt to sell the new pictures, would first approach the large downtown theaters which always showed first-run pictures. One of the conditions demanded by the first-run theaters invariably was an argeement not to sell the pictures they bought to other theaters in Boston for showing earlier than two or three weeks after their showing at the first-run theaters.

The Modern, Beacon, and Scollay Square Theaters, which showed the first runs of the less popular pictures, usually obtained protection of two weeks against second-run theaters. The Keith-Albee Theater, a vaudeville and motion picture theater showing first-run motion pictures, usually secured two weeks' protection over second-run theaters. The Fenway and the Washington Street Olympia Theaters, which regularly showed the same pictures at the same time, and showed them at first run, obtained 28 days' protection over second-run theaters. Loew's State Theater and Loew's Orpheum, first-run theaters, with few exceptions, showed the same pictures though not at the same time. Those theaters exhibited the pictures of the United Artists Corporation and of the Metro-Goldwyn-Mayer Pictures Corporation, a subsidiary of Loew's, Incorporated. Pictures for the two theaters always were bought under the same contracts. These pictures were shown for a week at Loew's State, which enjoyed a week's protection over Loew's Orpheum, and were then shown at the latter theater for a week. Such a showing in sequence was known as a "joint first run." Loew's Orpheum had two weeks' protection over the next run. The Metropolitan Theater, the newest theater in Boston, showed each picture one week and enjoyed 28 days' protection over second runs. It was operated by the Publix Theaters Corporation, a subsidiary of the Paramount Famous Lasky Corporation, and as a rule showed Paramount pictures. The Scollay Square Theater, which was operated by the Publix Theaters Corporation, often showed a picture that had been shown at the Metropolitan Theater within the Metropolitan Theater's period of protection. Thus the latter might have seven days' protection over the Scollay Square Theater, which might then show the picture seven days and enjoy the remaining fourteen days of the Metropolitan Theater's protection. The Scollay Square Theater at times showed a picture on the same day and date with the Washington Street Olympia. Frequently the

first-run theaters requested longer periods of protection or special protection against certain theaters.

After selling its pictures, or some of them, to a downtown theater for a first run in Boston, an exchange would then attempt to sell the same pictures to a number of second- and subsequent-run theaters. In contracting with such theaters it was incumbent upon the exchange to observe the protection which it had agreed to give the first-run theaters. The second-run theaters in turn would request certain protection against third-run theaters, most of which charged lower admission prices. A majority of second-run theaters in Boston received seven days' protection against third-run theaters. The third- and fourth-run theaters also desired protection against subsequent runs, but usually secured none. Each of such theaters could show a picture as soon as it had been shown by the theater immediately preceding it in the list of runs.

The classification of a theater in this scheme of runs was not a settled matter. A theater might show the second run of some pictures and the third run of others. The run it secured depended largely upon the amount the theater paid for the picture. This amount in turn depended upon such factors as the number of seats, the admission price, and the popularity of the theater. The exhibitor bargained with the distributor's salesman for a run and for protection in the same manner as he bargained regarding the price and the other conditions of the contract. If one theater was willing to pay $40 per week for the privilege of showing the third run of a picture in Boston, and another theater offered $50, the latter theater, other conditions being equal, probably would be given the third run, and the theater offering $40 would be given fourth run. When the protection to be granted a theater had been agreed upon by the exhibitor and the distributor's salesman, it was described briefly in the contract. Although the run or protection secured by a theater might be different for each picture, it was generally true that a theater bought most of its pictures for the same run and obtained about the same protection on all pictures.

The date for showing a picture at an exhibitor's theater usually was not set at the same time the contract between the distributor and the exhibitor was signed. Ordinarily the date was set later, by mutual agreement between the exhibitor and the distributor.

The uniform contract used by all distributors provided, however, that each exhibitor was to select a date for showing each picture within a specified length of time after a print of that picture had become available to him. When a print of a picture was received by an exchange, it was at once made available for showing by the theater which had contracted for its first run. It was available for the second-run theaters at the expiration of the first-run protection. In like manner it became available for subsequent runs at later dates. If an exhibitor did not select dates for showing within the time specified in the contract, the exchange was entitled to set a date for the showing of the picture and to require the exhibitor to show it at that time.[6] In actual practice, however, the exhibitors were not forced by distributors to date in all their pictures within the prescribed time.

Frequently exhibitors operating first-run theaters were permitted to delay several weeks, and sometimes several months, before showing some of the pictures. When they did so, the second-run theaters were delayed in showing such pictures and forced to select their programs from the pictures already shown by the first-run theaters. When a picture was thus delayed by a first-run theater and in like manner by the second- and third-run theaters, the fourth- and fifth-run theaters received the picture for showing long after much of the value of its popularity and timeliness had been lost.[7] Often several pictures that had been delayed in various ways would be made available to the fourth- and fifth-run theaters in such numbers that the theaters could not show them all, while at other times these theaters would be without pictures and forced to "spot book" in order to maintain their usual programs. To spot book was to buy an individual picture to fill a certain play date when for some reason the picture scheduled for that day was not available. Spot booking was usually an emergency measure on the part of the exhibitor. Pictures available for spot booking as a rule were the less popular ones, which had not been purchased by any theater in the purchasing exhibitor's zone.

Since exhibitors paid for pictures at the time they showed them, unstandardized protection brought the exchanges an

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[6] See Arbitration in the Motion Picture Industry, page 642, for provision in Standard Exhibition Contract for designation of play dates.

[7] Cf. footnote 3, page 88.

irregular flow of income. Exchange managers constantly were seeking means of making the income from their pictures more regular. With the showing of pictures held up by irregular protection agreements and by delays of exhibitors, it became almost impossible to regulate income in any way. Exchange managers also attempted to operate their exchanges with as few prints of each picture as possible. Most of the Boston exchanges used eight prints of each picture; one Boston exchange used 18. The eight prints were usually a sufficient number for first and second runs, but frequently were an inadequate number to take care of the more numerous third and fourth runs. When more than eight prints were required, the exchange customarily borrowed additional prints from the distributor's nearest other exchange. After the prints of a picture had arrived at the exchange, and before they were used by the first-run theaters in the different zones, they were idle on the shelves and brought in no revenue. Exchange managers, therefore, usually attempted to induce the first-run theaters to show a picture as early as possible. As soon as this showing had been completed, the picture became subject to the period of protection granted the first-run theaters. During the period of protection granted the first-run theaters in Metropolitan Boston, the Boston exchanges utilized their prints by sending them to other centers in New England, such as Portland, Maine, and Worcester, Massachusetts, for first runs in those centers.

The unstandardized system of protection constituted a serious problem to the booker at the exchange. It was his duty to arrange the dating of pictures by the exhibitors and to see that all exhibitors showed each picture as early as possible. In dating pictures to exhibitors, he was required to give strict adherence to all protection agreements. The necessity of observing the protection agreements of numerous contracts each time he dated a picture made his task difficult.

To meet these problems a Boston theater manager proposed that the Boston exchanges standardize their protection agreements by granting all theaters showing the first run of a picture 21 days' protection dating immediately after the completion of their showing, and all theaters showing the second run of a picture 7 days' protection after showing. Protection over a longer period of time against theaters charging extremely low admission prices

was to be granted to first- and second-run theaters. Theaters showing third-run pictures were to be protected by a provision preventing fourth-run theaters from showing a picture until after its third-run showing. Subsequent-run theaters likewise were to follow in sequence and were not to be separated by periods of protection. An entire week was to be left open for each run whether or not the theater showed the picture that long. This provision was to allow time for choice of dates and proper allotment of prints. All theaters were to be required to date the showing of a picture during the week in which it was available. If this were not done, such theaters were to lose their protection and the pictures would become available for the next run according to schedule. An exhibitor who neglected to show a picture during the allotted time could show the same picture at a later time whenever a print was available for his use.

Under this plan the granting of protection and the dating of a picture would follow an automatic program beginning with the day on which a picture was first shown by a first-run theater. Thus, any exhibitor could ascertain exactly when he was entitled to show a certain picture as soon as the first-run exhibitor had set a date. The plan further provided that the period of protection be reckoned from the last day of a previous showing. To illustrate his plan the theater manager explained that if a picture was given a first run from April 1 to April 7, for example, it could be shown at a second run during the week of April 29 to May 5, as a third-run picture during the week from May 13 to May 19, fourth-run during the week from May 20 to May 26, fifth-run during the week from May 27 to June 2, and sixth-run during the week from June 3 to June 8.

The theater manager who had worked out this plan believed that it would solve many of the problems which had developed as a result of the diversity of protection arrangements. The automatic sequence of showings would return to an exchange a steady flow of income. It would ease the work of the booker at the exchange. By systematic protection the plan would remove the friction between the exchanges and the theaters which had existed because of dating problems and the difficulties of the exchanges in keeping a sufficient number of prints available at all times. The originator of this plan also believed that if his plan were adopted throughout the United States, all distrib-

utors through reports from their exchange managers would know just when the largest number of prints would be needed at each exchange. By releasing their pictures on a different date in each of the large cities they would find it possible to vary the periods of peak load in the different cities. They then could ship prints from cities in which the demand for prints was low to those in which the demand was high.

The large theater chains, as such, doubtless would be opposed to this plan, which would limit their protection. However, inasmuch as most of these chains were controlled by large producer-distributors, it was believed by certain exhibitors that the plan would benefit such producer-distributor-exhibitor combinations. In the opinion of these exhibitors, such combinations which had been formed primarily to obtain assured outlets for pictures would gain more under the plan as distributors than they would lose as exhibitors.

To managers of subsequent-run theaters this plan of automatic protection would be of considerable assistance, because it would enable them to ascertain exactly when pictures would be available to them. They could plan their programs in advance with definite assurance that prints would be available on the dates set. They also would be assured that the pictures would reach them within a reasonable time after the pictures had been shown in first-run theaters in their zones, instead of being delayed indefinitely by previous-run theaters as in the past.

The originator of this plan, in commenting upon it, stated that he was more interested in the adoption of uniform periods of protection in Boston than in the exact periods adopted. He believed that the protection granted to first-run theaters could be increased or decreased by several days without affecting the operation of the plan.

This plan was submitted to the managers of the Boston exchanges and to many Boston exhibitors. Most of the exchange managers were of the opinion that a plan of this sort would be of great assistance to them in speeding up the showing of their pictures and in smoothing out their flow of income. They did not believe, however, that it was practicable to standardize the granting of protection. Protection was one of the conditions of the contract considered by distributors and exhibitors in their bargaining for product and price. The exchange managers believed that the

large theater chains would demand and secure special protection regardless of any local plan of standardized protection that might be adopted. The Publix Theaters Corporation, operator of a large chain of theaters including the Metropolitan Theater in Boston, had, it was said, sufficient buying power to be able to demand special protection. It had been able to obtain 30 days' protection for the Metropolitan Theater and could not be expected to look favorably upon a proposal to reduce protection to 21 days for all first-run theaters. Other first-run theaters which were receiving about 21 days' protection were not interested in this plan, which would not alter their positions. Several exhibitors operating subsequent-run theaters, however, expressed themselves as favorable toward the plan because it would enable them to schedule their pictures with more certainty. It also would permit them to run newer pictures than they had in the past. Many who favored the plan considered it impracticable and impossible of operation for the reason that the large theater chains would still wield sufficient buying power to enable them to demand and obtain special protection for their theaters. Most commentators stated that one could not expect the exchange managers to demand that the large theater chains subject themselves to the requirements of the plan, since these large chains were sources of large sales for the exchanges. No action was taken on the plan.

COMMENTARY: This case illustrates the need for and the difficulties arising from protection in the exhibition of motion pictures. It would seem that the argument, as developed in the case, as supporting a need for protection is, on the whole, sound. It should also be noted, however, that certain distinct limitations are very desirable. Protection ought not to be excessive or arbitrary as to time. Again, the zone within which the protection is operative should not be unreasonably large. Complaints have frequently arisen, and apparently are in many instances justified, wherein certain powerful exhibitors have been able to secure a measure of protection, both as to the length of time and as to the area within which the protection is applicable, that is quite out of reason. In at least two cases such protection was so onerous as to constitute valid ground for bringing suit for relief by the courts.

The specific problem which the proposed plan was designed to meet was that of securing a greater measure of standardization in the protection period. The wilful and arbitrary delay in the booking of pictures by prior-run houses frequently made it extremely embarrassing

for the managers of subsequent-run houses. However desirable the plan may have been in theory, it is not likely that its adoption could be secured. One reason is that the protection period is itself as large a factor in bargaining with the distributor as is price in many instances. Naturally, therefore, the first-run houses, which are more concerned with protection than some subsequent-run houses, and which are the largest and most powerful buyers, occupy a strategic position. A further difficulty arises from the fact that under many film contracts now operative a distributor can insist that a picture be continued in a theater beyond the period originally contemplated, provided its showing be profitable. Under these circumstances it would be extremely difficult, if not impossible, for subsequent managers to date in specifically any particular picture until and unless they knew exactly how long such a picture would be shown in a prior-run house. This obviously is frequently impossible.

These comments are not meant to imply that a vigorous handling of the whole problem of protection is not necessary. An appreciation of its significance to subsequent-run exhibitors and a courage to attack the problem are undoubtedly lacking among some distributors.

November, 1929 H. T. L.

WELLINGTON THEATER[1]

MOTION PICTURE THEATER

PURCHASING—*Determination of Flat Rental Prices to Offer.* A theater manager who was opposed to percentage bookings of all kinds was faced with the problem of how to determine an equitable flat rental price when contracting for yearly film requirements in advance. An analysis of the various classes of pictures shown and the variations in receipts and expenditures during the preceding year gave a basis for judgment as to the potential receipts for future pictures of the same grades. From these studies an average flat rental price for the different kinds of pictures was determined.

(1928)

In May, 1928, the manager of the Wellington Theater was confronted with the task of contracting for his yearly film requirements in advance. This process involved the selection of desirable pictures from the offerings of various producer-distributors and the determination of a rental price which the theater could afford to pay for such product.

The Wellington Theater was situated in Whitefield, an exclusive residential suburb of Cleveland, and presented motion pictures of the best quality to satisfy a discriminating clientele. Programs were of the double-feature type, consisting of a featured production, a program feature, short subjects, and newsreels. Changes were made twice each week so that 208 pictures constituted the average yearly feature requirements of the theater.

Two types of contracts were open to an exhibitor in purchasing motion pictures. He could either negotiate for a flat rental price for the pictures offered by a distributor or he could agree to play such pictures on a percentage arrangement. The most common arrangement provided for the payment of a guaranteed sum plus a percentage of all gross receipts in excess of a certain amount. The setting of the guaranty and the split figure was a matter for bargaining between the distributor and exhibitor. The exhibitor attempted to limit the guaranty to

[1] Fictitious name.

the amount which he would pay for the picture on a flat rental basis. He also tried to set the split figure as near as possible to the normal gross of the theater when playing a flat rental picture which had cost approximately the amount of the guaranty.[2]

The bulk of silent pictures were sold on a flat rental basis. Some theaters exhibited special productions and roadshows on a percentage arrangement, but these were usually confined to higher quality pictures which were expected to realize box office receipts that were in excess of the average gross.

The manager of the Wellington Theater was opposed to percentage bookings of all kinds. He never made such contracts except for roadshow productions which he could not buy on a flat rental basis. His aversion to the percentage arrangement was based on several grounds. Such contracts stipulated a definite length of run. If, during this run, a certain gross was realized, many percentage arrangements compelled the exhibitor to hold the picture for an extended run. A schedule of percentage sharings for such contingencies was worked out in advance and placed in the original contract. A lasting disadvantage operated against the exhibitor in that all agreements and price arrangements were used against him on future contracts. Even if percentage bookings did not realize the expected gross, a price revision downward on subsequent bookings was difficult to negotiate. Percentage bookings also forced the exhibitor to reveal figures which were considered to be confidential. This was particularly true in setting the split figure, since house expenses and an allowance for profit were supposed to accrue to the theater before sharing commenced. Exhibitors did not wish to reveal house expense and total gross figures, since these allowed producers to estimate the net profits of each theater. These same producers operated their own theaters and might use such information as a basis for establishing competing houses where excellent profits were indicated.

The allowance for profit was always a matter of disagreement. The manager of the Wellington Theater believed the allowance should equal the guaranty. One distributor stated that 25% of the guaranty was sufficient, while another allowed 50%. Because of this wide divergence of opinion, exhibitors often padded their

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[2] See Sidley Pictures Corporation, page 325.

expense figures in order to counteract the small allowances for profit which they received under percentage plans.

A distributor listed his contemplated year's product by groups or blocks[3] for presentation to the exhibitor. After a selection of pictures was made, negotiations as to price ensued. Sometimes the sales sheet contained the price which the home office of the distributor considered the theater should pay for each picture. In most cases this price was in excess of what a salesman would submit to the home office as an offer. It was not uncommon to find the original price 100% higher than the final price paid by the exhibitor. The question of pricing, therefore, became a matter of bargaining between the two parties. The only definite gauge for pricing was the amount paid by the exhibitor in the past for comparable products. Salesmen were constantly trying to raise prices from year to year and exhibitors were endeavoring to hold them to the level of previous contracts.

The manager pointed out that exhibitors were interested primarily in securing a fair average price per picture. They were aware that in any block of pictures there would be some good and some mediocre productions. If they could secure a fair average price, inaccuracies of individual picture evaluation would be compensated for without serious consequences. Distributors, on the other hand, in the manager's opinion, desired individual consideration to be given each picture in a block. Wherever this was possible, salesmen could employ superlatives of description which might influence exhibitors to offer more for pictures than they would otherwise pay for the block considered as a whole. In spite of the exhibitor's desire to secure a low average price, he was often forced to estimate the approximate value of a particular star or type of picture to his theater. Examples of actual contracts illustrating the bargaining nature of pricing and the attempt of the exhibitor to secure an average price are shown in Exhibit 1.

The manager of the Wellington Theater had definite factors to consider in evaluating the product for which he was negotiating. The question of first, second, or third run was definitely related to the price paid. Run and protection were distinct factors in pricing. The term "run" had a dual meaning. Its primary meaning related to the chronological order in which theaters of a

[3] See Federal Trade Commission *v.* Famous Players-Lasky Corporation, page 226.

Exhibit 1

Actual Exhibitor Contracts Illustrating the Bargaining Nature of Price Negotiation

Table I

Edgeworth Theater's Contract for Superior Pictures*

Block #1

Star Number	Number of Pictures	Price per Picture Quoted by Salesman	Exhibitor's Tentative Offer per Picture
1	3	$60	$35
2	3	75	25
3	3	75	30
4	4	50	25
5	4	60	30
6	1	omitted from contract	
7	2	50	20
8	3	50	17.50
9	3	35	15
10	2	50	15
11	4	50	15
12	2	50	15
13	3	50	15
Foreign Productions	2	35	7.50

* The Edgeworth Theater had a seating capacity of 900 and was situated in a mid-western city of 15,000 population. Its prices for films, therefore, were on a lower level than those of neighborhood houses in metropolitan areas.

Block #2

Special Production Number	Price per Picture Quoted by Salesman	Exhibitor's Tentative Offer per Picture
1	$60 + 30% to $300*	$30
2	60 + 30 to 300	30
3	60 + 30 to 300	30
4	60 + 30 to 300	30
5	60 + 30 to 300	30
6	60 + 30 to 300	30
7	60 + 30 to 300	30
8	60 + 30 to 300	30
9	60 + 30 to 300	30

* This was a percentage quotation which called for a guaranty of $60 to apply against 30% of the gross up to $300. All receipts in excess of $300 would be split equally between distributor and exhibitor.

EXHIBIT 1 (Continued)

TABLE I (Continued)

Block #3		
Special Production Number	Price per Picture Quoted by Salesman	Exhibitor's Tentative Offer per Picture
1	$120/$400*	$50
2	120/ 400	50
3	120/ 400	50
4	120/ 400	50
5	135/ 450	50
6	135/ 450	50
7	135/ 450	40
8	135/ 450	40
9	135/ 450	40
10	120/ 400	35
11	120/ 400	35
12	120/ 400	35
13	120/ 400	40
14	120/ 400	40
15	120/ 400	35

Percentage quotations for blocks #2 and #3 were not even considered by the exhibitor. Average price per picture for the entire three blocks under Exhibitor's Tentative Offer was $27.70. The exhibitor made a final offer of $25 per picture and the contract was closed on that basis.

* This was a percentage quotation which called for a guaranteed sum of $120 and an equal sharing of all gross in excess of $400.

TABLE II

PRINCE ALBERT THEATER'S CONTRACT FOR SUPERIOR PICTURES*

Block #1			
Star Number	Number of Pictures	Price per Picture Quoted by Salesman	Exhibitor's Tentative Offer per Picture
1	3	$300	$150
2	3	350	150
3	3	300	150
4	4	250	150
5	4	300	150
6	1	300	150
7	2	250	150
8	3	275	150
9	3	200	75
10	2	200	100
11	4	250	100
12	2	250	100
13	3	250	100
Foreign Productions	2	200	50

* The Prince Albert Theater seated 1,400 people and was situated in the business district of Cleveland. The prices shown above were for second-run Cleveland exhibition with the usual protection over third-run showings.

Exhibit 1 (Continued)

Table II (Continued)

Block #2		
Special Production Number	Price per Picture Quoted by Salesman	Exhibitor's Tentative Offer per Picture
1	$350	$175
2	350	175
3	350	175
4	350	175
5	350	175
6	350	175
7	350	175
8	350	175
9	350	175

Block #3		
Special Production Number	Price per Picture Quoted by Salesman	Exhibitor's Tentative Offer per Picture
1	$400	$200
2	400	200
3	400	200
4	400	200
5	400	250
6	400	250
7	400	200
8	400	200
9	400	200
10	400	200
11	400	200
12	400	200
13	400	200
14	400	200
15	400	200

Average price per picture for the entire three blocks under Exhibitor's Tentative Offer was $151.59. The exhibitor made a final offer of $150 per picture and the contract was closed on that basis.

particular city or zone could exhibit a given picture. Run also was used to denote the number of days during which a certain picture was to be exhibited by a particular theater. Protection was related to the first meaning of run, since protection schedules designated the number of days which had to elapse between each

Exhibit 1 (Continued)

Table III

Wellington Theater's Contract for Greatart Pictures*

Block #1

Star or Picture	Number of Pictures	Price per Picture Quoted by Salesman	Exhibitor's Original Offer per Picture	Exhibitor's Final Offer
Star #1	4	$150	$150	$150
Stage Play	1	100	100	100
Star #2	4	150	125	150
Star #3	4	140	125	130
Best Seller	1	100	100	100
Star #4	4	140	130	130
Stars #5 & #6 (co-starred)	2	125	100	115
Star #5	2	125	100	115
Star #6	2	125	100	115
Star #7	4	125	100	115
Stage Play	1	100	100	100
Star #8	4	125	125	125
Foreign Productions	2	100	100	100

* The pictures listed were purchased for third-run exhibition in Whitefield with the usual protection over subsequent-run showings.

Block #2

Special Productions	Price per Picture Quoted by Salesman	Exhibitor's Original Offer per Picture	Exhibitor's Final Offer
3 Specials with Star #9	$200	$175	$ 175
Special #4	175	150	175
Special #5	175	150	175
Special #6	200	175	175
Special #7	200	175	175
Special #8	200	175	200
Special #9	175	175	175
Roadshows			
#1	400	300	300
#2	400	300	300
Total price as offered	....	....	$6,590

The exhibitor in a final negotiation offered $6,000 for the entire list and a contract was approved by the distributor on that basis.

successive showing of a picture in the first-, second-, and third-run theaters of a particular city or zone. In estimating the price to be paid, therefore, the exhibitor considered first the lapse of time between the picture's release and its possible exhibition in his theater. This period was calculated by adding up the total days of protection granted to all theaters having prior runs in the city or zone. As this time span increased, the value of the picture in exhibition decreased rapidly. A second factor to be considered was the amount of protection which could be obtained against the next exhibitor of the picture. The value of such protection was based upon the theory that consumers would not postpone the satisfaction of their wants beyond certain limits, even though an economic saving was involved in such postponement. Therefore, if the period of protection was long enough, a certain class of customers would patronize a current production even though they might realize that in a few weeks they could see the same picture at half the initial admission fee in a subsequent-run house.

The length of run was also a variable in price when applied to special productions played on a percentage basis or when pictures were held over for extended runs. The split week run of four days and three days, however, was the usual arrangement for a majority of pictures and a constant factor in negotiating for price. Protection granted to the Wellington Theater was also well defined and unless otherwise stipulated became a standard factor. Prior to actual negotiation, therefore, the type and duration of the run and the extent of protection granted were definitely understood by the exhibitor and the salesman.

With these factors held constant, the determination of an equitable price rested upon two factors: the theater's cost of exhibition and the probable gross receipts which the picture could earn during its run. Theater overhead exclusive of film rentals was a fairly constant figure. It was evident that the margin between overhead and total gross receipts must cover film rentals and yield a profit to the theater. In order to determine how much could be expended on rentals, therefore, it was necessary to estimate the potential gross receipts.

To evaluate potential gross as accurately as possible the manager utilized both external and internal information. The external factors were of two types. Trade paper reports attempted to forecast the box office success of current productions.

Whenever possible, actual grosses from Broadway runs were shown as an indication of subsequent run earning power. When these figures were not available, advance information on the type of picture, the story, and the star were published. Local external conditions such as theater competition, unemployment, seasonal attendance, and other factors which affected the share of local amusement purchasing power which the Wellington Theater could draw upon were also considered.

A strong competitive position was enjoyed by the Wellington Theater, since it was the only neighborhood house in its immediate vicinity. Its strongest competitors were the Alta and the Burton Theaters, both of which belonged to a chain owned and operated by Superior Pictures, Incorporated, a producer-distributor. The Alta Theater was about a mile distant toward the center of Cleveland. The Burton Theater was a lower-grade house on the outskirts of Whitefield. One of the Alta Theater's advantages over the Wellington Theater lay in its right to first-run exhibition in Whitefield. However, the importance of this factor was minimized considerably by the fact that the Alta Theater ran vaudeville on its program and consequently did not require a sufficient number of features to monopolize the first-run exhibition of high-grade pictures in Whitefield. The chief disadvantage to the Wellington Theater arose when purchasing Superior Pictures, the product of the Alta Theater's owners. In such a situation the Wellington Theater could purchase Superior Pictures for third run or, if the Alta Theater could not utilize the entire list of pictures, a split of the product between the two theaters on a first-run basis was sometimes effected. No second run of Superior Pictures could be obtained, since all pictures shown as first run at the Alta Theater went to the Burton Theater for their second run. The Wellington Theater, therefore, had the alternative of taking Superior Pictures for third run or effecting a split of the product on a first-run basis. When such splits were made, the Wellington Theater could secure the pictures exhibited by the Alta Theater on a third-run basis if it so desired.

The internal records of the Wellington Theater were the other important source of information. These comprised a list of pictures previously purchased, together with the rentals paid and the grosses realized from the programs in which they were exhibited. The manager was convinced that these records should be used as a

guide to future buying since they represented the only tangible method of evaluating new product in the light of past performance. A rough comparableness in box office value existed in the productions of a given star from year to year. To a lesser extent, comparisons between different stars having similar characteristics also could be made.

The estimating of future performance from past records, however, was made difficult by reason of the two-feature program offered by the Wellington Theater. Although one of the features was stressed as the leader of the program, the exact proportion of gross receipts earned by each could not be accurately segregated.

A further complication arose from the fact that the relative cost of the two features fluctuated considerably and caused the combined feature cost to vary widely for different programs. This fluctuation was explained by three factors. First, the Wellington Theater purchased pictures for either first-, second-, or third-run exhibition in Whitefield. A spread in price, therefore, even between pictures of a comparable quality, was to be expected when films of a different run were used together on the same program. Second, the choice of play dates and the consequent selection of programs could not be made at the time of purchase. Bookings were made currently as soon as individual release dates permitted availability schedules to be determined for each theater. Consequently, programs, as finally made up, included pictures with varying degrees of comparableness as to run, protection, and dramatic quality. It often happened, therefore, that the price paid for the second feature of a program approximated or was equal to the cost of the featured production. In other instances, while the quality of the pictures might be much the same, one would be a first-run exhibition and the other a third-run exhibition. In such cases the difference in the rental cost of the two pictures would be greater and the total film cost would be less. A third possibility arose when a superspecial was booked with a picture of low cost and average quality. This situation would yield a wide range in price between the two pictures because of the high price paid for the special and would, for the same reason, increase the total film cost of that program above the average. The various rental combinations shown in columns 3 and 4 of Exhibit 2 are illustrative.

It was evident from such differences that, unless gross receipts fluctuated in approximately the same proportion as total film cost, there would be wide variations in the percentage relationship of rentals to gross for different programs exhibited by the theater.

In spite of this difficulty the manager believed that such percentage figures were valuable guides to future buying. He, therefore, combined the film cost of both features and all short subjects used in each program and found the percentage which this figure bore to total receipts during the run. Examples of percentages of this type appear in column 7 of Exhibit 2.

The manager believed that such percentages provided a definite measure of the drawing power of his theater's programs. He minimized the objection that such percentages did not secure an evaluation for both features separately, by stating that in his opinion the featured picture was the one which brought a majority of patrons to his theater. He believed, therefore, that the percentages as used constituted a check upon former prices paid for feature pictures and in particular indicated the box office attraction of the featured productions. As shown in Exhibit 2, the percentages ranged from 21% to 78% with a majority falling between 25% and 55%. Film cost for a vaudeville house was estimated to average approximately 20% of gross receipts, while for a motion picture theater using a single-feature program 25% to 30% was considered as typical. The manager stated that, with the double-feature programs of the quality he exhibited, a film cost of around 40% was not excessive. Percentages greatly in excess of that amount indicated that film prices were high in relation to gross receipts.

The percentages themselves could be checked by viewing the pictures and observing the reaction of the audience to individual programs. This check enabled the manager to detect the weaker picture of a program whose rental costs had yielded high percentage relationships. It was necessary also to examine the gross receipt figure before arriving at a final decision. High percentages of rental to gross indicated that too much had been paid for one or both features. They did not reflect the real reason, however, why too much had been paid. For instance, an exceptional picture might be purchased at a price which anticipated a gross in excess of the normal amount. If this gross was not realized, the fact would not mean that the picture was not

Exhibit 2

Double-feature Programs of the Wellington Theater in Which Superior Pictures Were Featured, 1927–1928

Featured Picture Key No.	Producer and/or Distributor of Featured Picture	Featured Picture Rental	Second Feature Rental	Run in Days	Total Gross for Run	Ratio of Total Film Rental (Including Shorts) to Gross (Manager's Method)*	Ratio of Total Feature Film Rental (Exclusive of Shorts) to Gross	Ratio of Individual Feature Rentals to Allocated Gross: Featured Picture 60 % of Gross	Ratio of Individual Feature Rentals to Allocated Gross: Second Feature 40 % of Gross
1	Superior Pictures	350	200	4	1,713	78 %	32 %	34 %	29 %
2	" "	350	125	3	1,393	38 %	34 %	42 %	22 %
3	" "	300	250	4	1,975	61 %	28 %	25 %	32 %
4	" "	350	300	4	2,315	57 %	28 %	25 %	32 %
5	" "	632	150	4	2,529	60 %	31 %	42 %	15 %
6	" "	300	100	4	3,514	30 %	11 %	14 %	7 %
7	" "	531	150	3	2,122	35 %	32 %	42 %	18 %
8	" "	350	200	4	2,285	52 %	24 %	26 %	21 %
9	" "	300	250	3	1 883	32 %	29 %	27 %	27 %
10	" "	300	125	3	2,119	24 %	20 %	24 %	15 %
11	" "	300	350	4	2,401	54 %	27 %	21 %	36 %
12	" "	519	150	3	2,037	34 %	33 %	42 %	18 %
13	" "	300	200	3	1,381	41 %	36 %	36 %	36 %
14	" "	250	150	4	2,466	35 %	16 %	17 %	15 %
15	" "	300	150	3	1,792	31 %	25 %	28 %	21 %
16	" "	350	250	3	1,866	36 %	32 %	26 %	55 %
17	" "	400	200	3	1,637	40 %	37 %	41 %	31 %
18	" "	350	250	4	2,913	39 %	21 %	20 %	21 %
19	" "	350	250	3	2,273	40 %	26 %	26 %	28 %
20	" "	300	125	3	2,217	21 %	19 %	23 %	14 %
21	" "	697	125	3	2,789	32 %	29 %	42 %	11 %
22	" "	350	225	4	2,261	40 %	25 %	26 %	25 %
23	" "	500	150	4	1,832	52 %	35 %	46 %	20 %
24	" "	250	200	3	1,672	30 %	28 %	25 %	30 %

* The four-day run included Sunday, which yielded the highest gross of any day in the week. The manager attributed this patronage as much to the goodwill of his theater as to the drawing power of his program. In calculating the percentages shown in column 7, therefore, he deducted from the gross shown for the four-day runs an amount which was the difference between the actual Sunday gross and the average gross received on other days of the week. Because of this adjustment an apparent inconsistency exists when the percentages for the four-day runs of column 7 are compared with those shown in columns 8 and 9.

good but rather that too much had been paid for its exhibition. On the other hand, a feature might be purchased at near the average price and turn out to be a total loss in exhibition. The cost of such a picture would be too great, not because the price was exorbitant, but because the picture itself was below standard.

It was evident to the manager, therefore, that his percentages could not be used as a substitute for detailed analysis and the exercise of careful judgment. He did believe, however, that they were useful as indicators since they automatically pointed out cases which needed careful analysis.

There were alternative methods of securing percentages which differed slightly from the basis employed by the manager. The assistant manager of the Wellington Theater suggested a procedure which omitted the film cost of short subjects and newsreels from the calculations. This method resulted in percentages which related total feature film cost to total gross and threw the cost of short subjects into the general overhead of house expense. The arguments in favor of this method centered chiefly about the fact that total gross was increased or diminished primarily by the success or failure of the two feature pictures. Short subjects and newsreels were incidental parts of every program and took on the aspect of an overhead expense. Price fluctuations also were not so pronounced for this type of product. Newsreels were contracted for on a weekly service basis for a year in advance, while comedies and educational subjects were sold in a series which often amounted to a contract for biweekly, weekly, or fortnightly service. The Wellington Theater's average expenditure for short subjects amounted to $50 or $60 per program.

While percentages would not be greatly modified by the exclusion of short subject film cost, there was some reason to believe that the segregation of feature prices in this manner yielded a truer picture of their earning power for the theater. This method, in common with that used by the manager, had the disadvantage of not securing a separate evaluation for each of the features appearing on the same program. The significance of this point was open to question. The manager believed that one percentage for the combined picture cost was sufficient, since an estimation of both pictures from the standpoint of the theatergoer was necessary in any event. On the other hand, percentages for combined picture cost did not reflect the relative value of

each to the theater. This fact was of some consequence, since any two pictures appearing on the same bill were not bought as a program nor were they usually purchased at the same time or from the same distributor. A question of separate valuation was, therefore, a definite consideration if percentages were to be of the greatest value to the exhibitor as aids to future pricing.

A third method was suggested in an attempt to secure separate percentages for each feature. It was proposed to attribute arbitrarily a certain percentage of the total gross to the two pictures of the double-feature program. For example, 75% of the gross might be considered as earned by the featured production while 25% would be allocated to the program feature. This sharing differential between the two pictures might be increased, or diminished to an equal split of 50% to each. In spite of the arbitrary allocation of gross in this manner, the method possessed the advantage of securing a percentage relation of rental to gross for both pictures individually which could be used as a criterion to future buying.

One serious disadvantage existed in the use of this plan. When pictures were contracted for in advance, no definite play dates were set; consequently, the exhibitor could not tell which pictures would appear on the same program. The featured picture was always a high-grade production. The program feature, however, usually varied; sometimes it was of equal quality and run, while at other times it was inferior to the featured film or was a subsequent-run picture. Thus a current program feature might be purchased at a price based upon that paid for a comparable film which had been secured and run during the previous season as a featured production, and vice versa. This fact militated against the use of wide differentials in allocating gross to the two pictures appearing on the same program. For example, suppose a picture was purchased for $300 and was run as the featured picture of a double program. Further suppose that the gross of the run amounted to $2,000. Allocating 75% of the gross to the featured picture yields a 20% relationship between rental and gross. Now assume that a picture of the same type or with the same star is purchased for the current season on the strength of past records. Three hundred dollars would appear to be a fair price for such a picture. Suppose, however, that the film is dated in as a program picture with another featured

production. For the sake of illustration, assume that this run also grosses $2,000. Using the same basis as before the program picture would be allocated 25% of the gross and the percentage relationship would mount to 60%. This is perhaps an extreme example, but it illustrates the fact that wide differentials in the allocation of gross to specific pictures cannot be employed unless such pictures are played consistently as either program or featured productions.

On the other hand, when a picture of exceptionally high quality and a mediocre production were paired, some differential in gross receipts attributable to each appeared necessary. A significant obstacle was encountered in attempting to balance these two factors so that percentages could be of real use in the advance purchasing of films prior to the setting of play dates and the determination of programs.

If this last method was adopted, a percentage figure would be secured for each feature on the program. By an allocation of a portion of the gross to each picture the percentages would be more nearly comparable to those secured for theaters showing single-feature programs.

Faced with the task of purchasing his 1928–1929 film requirements, the manager of the Wellington Theater was interested in developing a method of picture evaluation which would reflect the soundness of his program selection and would at the same time indicate the earning power of each picture as a guide to future buying. A partial list of Superior Pictures which were submitted to the manager for purchase is contained in Exhibit 3.

COMMENTARY: This problem involves particular consideration of a method by which an exhibitor sought to obtain a basis upon which he might be better able to determine a fair price to pay for his films, particularly when such payment was made in the form of flat rental.

The essential basis of approach was sound. The potential box office value of a film should properly constitute the basis for the determination of its rental value. In addition to this basic principle, any statistical data which a manager may have should be of value in dealing with salesmen, especially when these salesmen have some definite knowledge of a theater's expenses and gross receipts.

The plan is based on the assumption that instead of placing a particular value upon each individual picture purchased, a basic average price is the sounder policy. This is suggestive of the method pursued

Exhibit 3

Superior Pictures Offered to the Wellington Theater for the 1928–1929 Season

Block #1

Star Number	Number of Pictures Featuring Each Star	Key Number of Comparable Pictures on Exhibit 2
1*	3	19
3	3	12
4	2	9
8	3	2, 3, & 14
10	2	4
11	1	13
Total number of pictures offered	14	

* These numbers correspond to those for stars listed in Block #1 of Tables I and II in Exhibit 1.

Block #2

Special Production Number	Key Number of Comparable Product for Exhibit 2
1*	8, 15, 21
2	8, 15, 21
3	8, 15, 21
4	8, 15, 21
5	6
6	17
7	10
8	1
9	1
10	22
13	19
15	13
Total Number of Pictures Offered 12	

* These numbers correspond to those shown for Special Productions in Block #3 of Tables I and II in Exhibit 1.

in buying pictures under the block booking plan. It may be said that when a distributor places pictures of even quality in a given group, such an average figure is a better gauge of value than is the case where poor pictures are included with good ones in an effort to sell the inferior product.

The difficulty with the procedure suggested is that it is an attempt to deal with a number of variables, the greater number of which are recognized in the case. It follows, therefore, that the individual judgment of the exhibitor will remain of the greatest ultimate importance. The more data which he can obtain, the sounder that judgment is likely to be, but even in such cases as the one under review, individual judgment is perhaps more important than any one single factor, perhaps more than all of them combined.

Some detailed criticisms might be suggested. It would appear wise to exclude short subjects rather than include them in the figures dealing with feature subjects. Further, it is probably unwise to attempt to emphasize the so-called feature picture to the extent that was done in this case. Not infrequently the picture selected by the manager as the feature picture may to many of his patrons be less attractive than the so-called program picture. Furthermore, it will be noted that a number of the difficulties presented in this problem are peculiar to those parts of the country wherein a double-feature program is usual.

Perhaps the greatest weakness is the attempt to segregate the importance of the two feature pictures. In Exhibit 2, it will be observed that the whole plan is dependent upon attributing a certain value to the first and second features. Thus in picture Number 2 the manager apparently believed that film rental for the two pictures in question amounted to 38%. Clearly, however, this figure is dependent upon the character of the feature picture. In order that this 38% should be applicable in purchasing for another season, it is not only necessary that the new picture be comparable in quality with this particular film, but also that it shall be shown in conjunction with another feature picture substantially identical in character with the second feature of the current year. This procedure is impossible, since the manager cannot know what two pictures will be exhibited until these pictures are actually dated. And even then he is compelled to select arbitrarily which should be the feature picture. Obviously, these facts vitiate any contrasts which might be based upon the method herein described. The deduction of the Sunday gross receipts in an effort to place the four-day run on a basis with the three-day run is also questionable, not only because it is an arbitrary deduction, but also because the simple fact is that a four-day run does exist and includes Sunday showings.

Such data as are here collected may be of value to the manager as giving him some basis upon which to bargain with a salesman. They cannot, however, be relied upon as giving any distinct clue as to the amount to be paid for any particular type of picture. It still remains

true, nevertheless, that the more data an exhibitor may have relative to his operation, the better off he is likely to be.

Further, some definite percentage of film rental to gross receipts is extremely valuable as a guide in purchasing. It is more likely to be of value, however, in keeping the gross film rental for the year within bounds, than in seeking to determine the specific price to be paid for a specific picture.

November, 1929 H. T. L.

Willard Theater[1]

MOTION PICTURE THEATER

Purchasing—*Acceptance of Percentage Basis for Motion Picture Rental.* The manager of a motion picture theater which hitherto had purchased all pictures on a flat rental basis was asked by a distributor to purchase a newly released sound picture on a guaranty and percentage sharing basis. The manager objected to a percentage arrangement because of the necessity of divulging confidential information as to the theater's receipts, which the distributor might later use as a basis for demanding higher prices. The manager accepted the distributor's terms for this and other pictures, however, because it was difficult to obtain recent pictures for his theater and because he had no experience by which to judge the possibilities of the newly introduced sound pictures.

(1928)

The manager of the Willard Theater considered in September, 1928, the practicability of purchasing motion pictures on a guaranty and percentage sharing arrangement.[2] Previous to that time, all pictures had been licensed by the theater on a flat rental basis. The issue was raised through the unwillingness of a distributor to sell a newly released sound picture on terms other than those permitting the distributing company to share in the gross receipts from the exhibition of the picture.

The Willard Theater was one of three theaters owned and managed by Willard Theaters, Incorporated, in the city of Brooklyn. It was the largest of the three theaters, with a seating capacity of 1,400, and was located in one of the principal business and shopping districts of the city. For a "top" admission price of 40 cents for matinee and evening performances, the Willard Theater presented a feature picture, a comedy or short subject, a newsreel, and an overture by a concert orchestra. The program was changed three times weekly, on Tuesday, Thursday, and Saturday. A sound reproducing device had been installed which enabled the theater to play either disc-synchronized or

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[1] Fictitious name.

[2] See Sidley Pictures Corporation, page 325.

sound-on-film pictures. The theater maintained a continuous show from 1 p. m. to 11 p. m. with vaudeville in the afternoon and evening.

As an independent theater, the Willard was second to the large chain theaters in protection and enjoyed first-run privileges on the releases of certain producing companies. Competition was largely centered in two large chain organizations which operated a number of theaters in Brooklyn. These two competing chains, with the exception of a few theaters, never showed the same pictures. For several years it had been increasingly difficult for independent theaters to secure high-grade pictures for first runs[3] inasmuch as the chains with their greater buying power were able to outbid the independent theater and secure whatever pictures they desired. A theater chain, when making its purchases, demanded that it be permitted to show the pictures first and usually required that all its theaters, whether first-run or not, be protected against any showing by a theater outside the chain.

The main objection held by the manager of the Willard Theater to the buying of motion pictures on a percentage basis was the necessity of permitting the distributor to check gross receipts at the theater during the playing of a particular picture.[4] In negotiations with the salesmen, moreover, the manager would find it necessary to substantiate arguments for a lower percentage rental by furnishing information as to receipts on previous showings of similar pictures. The distributor would utilize this information, together with that secured by the "checker," in bargaining for higher rentals on future releases.

If the percentage arrangement on one picture proved profitable to the distributing company, in the opinion of the manager, the distributing company would stipulate a similar percentage on all its future pictures or might require as a guaranty the amount earned by that picture. Thus the precedent set by a good picture might be unfavorable to the exhibitor. If the percentage proved unprofitable to the distributor, he would require a higher percentage on future releases. Salesmen were inclined to boast of the performance of a theater buying on a percentage basis in trying to

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[3] First run in Brooklyn was usually after Broadway showings, with seven days' protection over second run.

[4] See Shafer Pictures Corporation, page 336.

sell to other theaters, and such information would be useful not only to all distributors but also to competitive exhibitors.

While a percentage arrangement enabled the manager to minimize the element of risk involved in exhibiting pictures of unestablished merit, he believed the gamble was not greatly reduced, as the guaranty required was commonly about as high as the flat rental terms on the same picture would ordinarily be. Percentage buying, moreover, would prevent the buyer from capitalizing on his ability to select and buy pictures successfully.

The manager preferred to purchase pictures at a flat rental. Competition among theaters in the vicinity required careful bargaining on his part in order to secure the best bargain from a number of alternative purchases. It was often profitable to purchase a group of pictures that had been shown previously in Brooklyn theaters and had thereby obtained exploitation. In other instances, first-run privileges outweighed the exploitation value and were worth a higher price.

Some distributors favored flat rentals on their program pictures for two reasons. It was possible to secure more favorable terms by bargaining on a specified amount, and it was difficult and expensive to check the box office receipts on a percentage contract. For special pictures previously roadshown in the larger cities, such distributors usually required a guaranty and percentage arrangement.

The popularity of sound pictures led a number of distributors in the latter months of 1928 to sell such releases on a percentage arrangement. The manager of the Willard Theater was approached by a salesman of Perry Pictures, Incorporated,[5] for a contract to exhibit one of the new sound picture releases. The salesman stated that it was the policy of his company to sell the picture only on a guaranty and percentage arrangement. Three arrangements were being offered to exhibitors in booking the picture.

The first plan called for a guaranty to the distributor equal to the theater's average film rental for the current year on all pictures and, in addition, two percentage divisions of the receipts over and above the average receipts of such pictures. The percentage divisions requested by the distributor were: 50% of the first

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[5] Fictitious name.

\$1,000 over and above the average receipts, and 65% of all receipts in excess of a figure equal to the average receipts plus \$1,000.

The second plan required the same guaranty as did the first plan and at least 50% of the receipts in excess of an amount which included overhead, guaranty, advertising, and a profit for the exhibitor. Purchasing on this basis required an accurate itemization of theater expense to accompany the contract application.

Under the third plan the distributor requested 20% of all receipts up to a figure which covered all the operating costs. This agreement provided that the distributor be assured of a minimum of \$250. All receipts above operating costs were to be divided on terms of not less than 50% nor more than 70% to the distributor and the balance to the exhibitor.

The average weekly receipts at the Willard Theater approximated \$6,000, against which a weekly average feature film rental of approximately \$750 was incurred. The low ratio of film rental to receipts was due to the fact that the theater was under heavy expense for vaudeville entertainment.

The manager of the Willard Theater acceded to the percentage system in purchasing the sound pictures. Difficulty in obtaining comparatively recent pictures for his theater was a large factor in his decision. He was also influenced by the fact that the new pictures were proving very popular and that he had no experience by which to judge their possibilities. The first plan was preferable, in his opinion, and the proportion offered by the saleman was accepted.

The theater manager and the salesman agreed upon a guaranty fixed at the average film rental, or \$750, upon an equal division of the first \$1,000 of receipts in excess of \$6,000, and upon a percentage split of 65% to the distributor on all receipts above \$7,000. While the manager was willing to open his books to the distributor in substantiation of the stated amount of operating costs, the distributing company, because of its confidence in the honesty and fairness of the Willard Theater manager as reflected from past experience, did not require the substantiating facts. The contract as made between the manager and the salesman covered a group of pictures and was approved at the distributing office.

A checker was maintained at the theater by Perry Pictures, Incorporated, during the run of the picture. The first picture was exhibited for an entire week and grossed approximately

$8,500. The rental paid accordingly was $2,225. Other pictures in the group, however, did not fare so well, several falling considerably below the average receipts which formed the basis of the agreement.

The manager held one objection to the arrangement. Under the straight rental plan, which permitted him to retain all the profits earned by a picture, the extra profit on an exceptional picture helped to compensate him for the poorer pictures. The percentage arrangement required the exhibitor to turn over to the distributor a large percentage of such extra profit on exceptional pictures, leaving him to bear the loss on the poorer pictures which were sure to be present in any group of pictures purchased.

To make the percentage plan equitable, the manager believed, final settlement should be made on the entire group of pictures so that the good pictures would help compensate for the poorer ones. He was endeavoring to inaugurate this policy but thus far had had no success.

COMMENTARY: This case presents the problem of percentage pricing from the point of view of the exhibitor. The various objections to the checking of box office receipts by distributors have been covered in the case on the Shafer Pictures Corporation, and will not be repeated here.

In the present case, two particular issues may be noted. The first relates to the reasons why the manager of the Willard Theater was willing to accept a percentage pricing plan in spite of his previous opposition to it. There are probably two reasons which are applicable here as in other cases. One was that he had no experience which might serve as a guide to the box office value of sound pictures. The second was that the distributor practically refused to sell on any other basis, taking advantage of the exhibitor's belief that sound pictures were essential to his theater.

The other issue relates to the particular plan which the manager of the Willard Theater should accept. Three proposals were made. The first two do not differ in any essential particular. Whatever advantages might theoretically appear in either plan would undoubtedly be compensated for by a readjustment of the guaranty figures or of the percentage figures. The second plan does call for an itemization of the expenses of theater operation which the manager of the theater might be loath to reveal.

A distinct difference develops, however, as between either one of these two plans, on the one hand, and the third plan, on the other. In

the third plan, the risks of operation are borne jointly by the exhibitor and the distributor. The returns to the distributor, therefore, would naturally be higher than under any other plan. They would also be somewhat higher because of the necessity of obtaining contributions toward his film costs, which are included in the guaranty figure under the first and second plans but which are not included in any figure given in the third plan. Just what this plan would mean in terms of dollars can be roughly determined. The theater normally had been securing $6,000 per week in box office receipts. If one assumes that this included a 5% profit, and if one assumes that the average film rental was $750, then the cost of operation of the theater, exclusive of profit and film cost, would amount to $4,950. The distributor proposed an 80% and 20% split of box office receipts up to a figure which covered costs to the theater operator. This would mean that the theater would have to obtain $6,187.50 in total box office receipts in order for the exhibitor's share to equal his operating costs. On the particular picture in question, the theater received gross receipts of $8,500, leaving a net profit of $2,312.50 to be divided. If one assumes the split of this figure on the basis of 60% and 40%, the theater would obtain $925 in net profit from the exhibition of this picture. The distributor would obtain 20% of $6,187.50 plus 60% of $2,312.50, or $2,625. Though this figure seems large, it would not appear to be exorbitant in consideration of the facts as noted above. It may be noted, however, that this was an exceptional picture. The average receipts of the house amounted to about $6,000. On that basis a division of the receipts would mean a net loss to the exhibitor.

On the other hand, by accepting the proposal which was finally agreed upon between exhibitor and distributor, the exhibitor made a profit of $1,325. The distributor obtained $2,225. This latter figure is his gross receipts and not his net return.

These figures would make it apparent that the decision of the manager was quite sound.

There is a suggestion in the case that the exhibitor might arrange with the distributor to make final settlement for an entire group of pictures instead of on a basis of particular pictures. As a general policy, this would probably not be acceptable to the distributor. There would be no assurance that the exhibitor would still have the money to pay for the films when the time for settlement arrived. With dishonest exhibitors it is possible that box office receipts might be readjusted from time to time so as to deprive the distributor of some of his just return.

March, 1930 H. T. L.

Rainier Theater[1]

MOTION PICTURE THEATER

Purchasing—*Five-Year Franchise Agreement to Assure Supply.* An independently owned motion picture theater which showed first-run films had been securing pictures from the large producer-distributors. Because these large companies had acquired control of all other local first-run theaters, whose program requirements necessitated first-run exhibition of a large proportion of the output of their affiliated companies, the theater faced the problem of an uncertain supply of high-quality first-run pictures in the future. In 1929, therefore, it considered acceptance of the recently announced Allied States Franchise Agreement, whereby it would agree to exhibit the pictures of a small, independent producer for five years.

(1929)

The owner-manager of the Rainier Theater, late in 1929, considered acceptance of the recently announced Allied States Franchise Agreement whereby he would contract to exhibit Tiffany pictures during 1930 and throughout the ensuing four years. In the past the films shown in the Rainier Theater had been leased from large producer-distributors. Four of these companies, by 1929, had acquired control of practically all the local first-run theaters. The program requirements of these theaters necessitated the first-run exhibition of a large proportion of the feature picture output of their affiliated producing companies, as well as of the best films released by competing producers who did not control local first-run houses. The Rainier Theater consequently faced the problem of an uncertain supply of high-quality first-run pictures; accepting an Allied States Franchise Agreement with Tiffany Productions, Incorporated, offered one solution of this problem.

The Allied States Franchise Agreement was conceived for the purpose of assuring an uninterrupted flow of first-quality motion pictures to independent exhibitors at prices which would enable them to make a profit. The agreement involved Tiffany Productions, Incorporated, and the RKO Distributing Corporation as

[1] Fictitious name.

producer-distributor members; the Allied States Association in the field of exhibition; and RCA Photophone, Incorporated, to supply and service high-quality sound reproducing equipment the prices and terms of which were within the reach of the small, independent exhibitor. The agreement was drawn up in such a manner as to provide a basis for cooperative advantages. Members operated as separate units, free to conduct negotiations with any company, regardless of its associations.

The Rainier Theater was located in a Pacific Northwest city with a population of approximately 400,000 inhabitants. The theater was situated on a triangular plot of ground formed by the convergence of two main traffic arteries that connected the northeast and southeast residential districts with the principal business section of the city. The entrance to the theater faced on Bybee Avenue, a well traveled north and south bound thoroughfare that intersected at the western apex of the triangle. The Rainier Theater was 1½ miles due east of the main theatrical center. The intervening territory was divided into two well defined districts. Wholesale buildings and warehouses were situated in the eastern section, and large retail stores and office buildings in the western section.

The district immediately surrounding the Rainier Theater, while possessing many of the characteristics of a neighborhood shopping center, formed, in reality, a subdivision of the main business district. Automobile, pedestrian, and street car traffic on both the converging arteries and the intersecting avenue was heavy throughout the day and evening. A conservative tabulation estimated that automobile traffic averaged about 4,500 cars per hour from 7 a. m. to 7 p. m. and approximately 2,500 thereafter until 10 p. m. Medium- to low-class residential districts formed a semicircle about 1½ miles north, south and east of the Rainier Theater. A series of wealthy districts was about three miles distant.

The Rainier Theater was constructed in 1927, as a part of a large office building. It had a seating capacity of 2,500; was thoroughly modern in both construction and equipment; and was outstanding locally because of its atmospheric design and effect. Since the theater's opening to the public, the entertainment policy had remained substantially the same. Programs were changed weekly. They usually comprised a good quality

first-run feature picture, short subjects, newsreels, an organ solo, and an inexpensive stage presentation or a few vaudeville acts. At various intervals, an orchestra of 10 musicians had been maintained. Some second-run feature pictures were shown but only when they were of outstanding box office value. Programs were continuous from 2:30 p. m. Admission was 25 cents before 6 p. m. and 35 cents thereafter. Box office receipts averaged about $7,200 per week, ranging from $4,000 to $11,500.

Competitors included both first-run and second-run theaters. The seven first-run houses located in the main theatrical district of the city were of particular importance. Their programs, which were built around single feature pictures, were changed weekly. Some of the programs were made up entirely of motion pictures; others included stage presentations; and still others, several vaudeville acts. These theaters had seating capacities of from 1,000 to 3,500 each. Admission prices varied from 50 cents to 65 cents with 60 cents approximating a standard. Weekly receipts ranged from $7,000 to $22,000. Three modern second-run theaters with seating capacity of about 1,500 each, were also located in the main theatrical center. Their programs, consisting of outstanding feature pictures, comedies or short subjects, and newsreels, were changed every week. Admission prices were 25 cents and 35 cents. Weekly gross receipts averaged about $6,000 per theater. Two of these houses were controlled by a national theater chain. The third was independently owned and operated.

The Rainier Theater had been in a position to compete with the theaters located in the main theatrical center, for several reasons. Its location, especially with reference to traffic arteries, was advantageous. Free parking facilities were exceptionally good. It was a comparatively large theater, and the atmospheric style of its decoration was particularly attractive. Moreover, it exhibited first-run feature pictures and charged comparatively low admission prices.

Competition did not exist in the residential districts immediately surrounding the Rainier Theater. In the more distant wealthy sections there were three competing theaters. A large chain operated two second-run ultra-modern neighborhood houses located approximately two miles apart. The third, a similar type of theater, although not affiliated with the chain, was

known to have entered into a long-term agreement with one of the large producer-distributors. These theaters exhibited second-run and third-run feature pictures, short subjects, and news-reels, and at times presented short playlets given by a local stock company. Programs were changed bi-weekly. They were continuous from 3 p. m.; admission prices were 25 cents and 35 cents. The Rainier Theater had been in a position to compete with these theaters for neighborhood patronage, principally because it exhibited first-run feature attractions.

The manager believed that the success of the Rainier Theater had been due, in a large measure, to its exhibition of good first-run attractions. Under existing circumstances, such pictures could be obtained by booking the productions of several small producers and the less attractive pictures of those large distributors that did not operate local theaters. To depend entirely upon these sources of supply, however, would hardly be in keeping with sound business practice. In the first place, it was to the advantage of the independent producer to sell his pictures first to a large chain, if such sale was possible. The element of uncertainty, therefore, became an inherent weakness in such sources of supply. Furthermore, independent producers as such were disappearing from the field, especially those producing pictures solely for exhibition in independently owned and operated theaters.

In the opinion of the management, the outstanding attractions of the large producers, when exhibited as second-run, were of greater box office value to the Rainier Theater than were the second-rate pictures which were available for first-run exhibition. Reliance on the less attractive first-run pictures, therefore, was not considered advisable.

Recognizing the seriousness of this situation and realizing that future developments might place added limitations on the sources of film supply, the manager of the Rainier Theater considered entering into an Allied States Franchise Agreement with Tiffany Productions, Incorporated. Since, during his 15 years of theatrical experience, several similar franchise plans had been enacted and subsequently discontinued, the manager was in a position to analyze the conditions under which a franchise agreement would be successful. In his opinion, there were two factors of outstanding importance to be considered, namely, the status of the company proposing the franchise, and the contract itself.

Although the Rainier Theater was not affiliated with the Allied States Association,[2] the manager was impressed with its administration and in the event of a contract with Tiffany Productions, Incorporated, planned to become a member of the local unit of the association. In the consideration of the problem at hand, however, since joining the Allied States Association was not an essential part of the agreement, emphasis was placed on the two factors of direct importance: an analysis of Tiffany Productions, Incorporated, and an examination of the franchise agreement.

Tiffany Productions, Incorporated, although a comparatively new organization, had achieved a noteworthy position in the motion picture industry. As originally organized, it was known as Tiffany-Stahl Productions, Incorporated, the firm name having been changed upon acquisition of the company by a wealthy investor whose interests prior to that time had been in a quite different type of industry. Tiffany Productions, Incorporated, operated only one theater, the Gaiety, which was used primarily for exploitation purposes in New York City. The company apparently did not intend to develop a large theater chain. Its distributive organization comprised about 34 exchanges, one of which was located a short distance from the Rainier Theater.

The manager of the Rainier Theater believed that Tiffany Productions, Incorporated, had assented to become a party to the Allied States Franchise Agreement in order to expand the existing market for Tiffany pictures. He was of the opinion that, in 1929, the medium-size producer-distributor was in an uncertain economic position. Mergers and working agreements had consolidated a large part of the first-run and second-run theaters throughout the country under the control of four large producing companies. The aggregate box office returns from producer-controlled theaters were estimated to be in excess of two-thirds of the total box office revenue of the United States. This situation naturally limited the remaining open market to independent exhibitors whose theaters in general were second-, third-, and subsequent-run houses.

Tiffany pictures had never been shown in the Rainier Theater. The manager, however, from a knowledge of their material contents and exhibition elsewhere judged their quality to be com-

[2] See Allied States Association of Motion Picture Exhibitors, page 659.

parable to that of average good feature pictures. The annual output of Tiffany Productions, Incorporated, had comprised about 20 feature pictures and several short subjects. Recently the company had announced a greatly improved type of product. The 1929–1930 program called for 26 first-class features and 26 short subjects, the total budget for which was reported to be in excess of $10,000,000. All pictures were to be synchronized on RCA Photophone equipment.

The manager of the Rainier Theater considered these changes as indicative of the company's future plans. He realized, however, that the pictures offered by all motion picture companies had varied rather widely in character and in quality from year to year. It was, therefore, difficult to predict with assurance the box office value of any producer's pictures for five years in advance, particularly when the industry was in a stage of rapid development. In his opinion this might prove a valid objection to any form of long-term agreement, including the Allied States Franchise.

The franchise agreement as presented to the Rainier Theater embodied several departures from the regularly used exhibiton contracts. Some of these changes were unimportant. Others, however, were particularly significant. The manager, therefore, undertook to analyze them and to determine whether the contract was equitable.

The following excerpts taken from the text of the Allied States Franchise Agreement are substantially as worded in the contract.

1. The distributor hereby grants to the exhibitor and the latter accepts for exhibition all sound motion pictures, excluding newsreels, up to a maximum of 52 feature pictures and 52 short subjects generally released by the distributor, during the year August 15, 1929, to August 15, 1930, and during the 4 succeeding years. If less than 26 feature pictures are generally released by the distributor in any such year the exhibitor has the right to cancel the franchise on 60 days' notice.

2. The exhibitor shall pay for each of such motion pictures generally released during the first year hereinabove provided, the sum indicated in the schedule hereof; for each of such feature motion pictures generally released during the subsequent years hereinabove provided, the number of dollars as shown in the schedule hereof for each $100,000 of exhibition value of said feature picture; and for each of such short subjects generally released during the subsequent years as hereinabove provided, the number of dollars as shown in the schedule for each $10,000 of exhibition value of said short subjects.

3. At least 30 days prior to the release date of each motion picture, the exhibition value of each motion picture shall be determined by the Distributor and 5 representatives of exhibitors throughout the United States holding similar franchises from the Distributor, acting in an advisory capacity with the general officers of the Distributor. The 5 representatives shall be determined by at least ⅔ of all such franchise holders by whatever method they may desire. The Distributor makes no representation that such representatives will be so appointed or will act hereunder. If said representatives are not so appointed or cannot or do not act hereunder or if said representatives and the Distributor fail to agree upon the exhibition value of any such motion pictures, the exhibition of all such motion pictures on which there has been no agreement shall for the purposes of this franchise be fixed at three times the negative cost thereof as shown on the books of the producers thereof but in no event shall the average exhibition value of all of such feature motion pictures generally released in any such year exceed the sum of $750,000 for each feature motion picture. Within a reasonable time after the determination of the exhibition value of each motion picture as hereinabove provided, the Distributor shall send a written notice by mail to the Exhibitor of the amount of said exhibition value. The deposit of such notice in the United States mails shall constitute delivery of such notice to the Exhibitor hereunder and the exhibition value as set forth in such notice shall be deemed to be the exhibition value hereunder as fully as if such exhibition value were determined by the parties hereto and specifically set forth in this franchise. In any controversy pertaining to this franchise a written statement indicating the exhibition value of any motion picture herein provided for and purporting to be signed by at least 3 of said representatives and an officer of the Distributor and acknowledged in accordance with the laws of the State of New York shall be conclusive as to the exhibition value of such motion picture hereunder and a written statement of the negative cost of any motion picture herein provided for, verified under oath by an officer of the Distributor in accordance with the laws of the State of New York, shall be conclusive as to the amount of such negative cost hereunder.

5. The Distributor shall have the right to roadshow or cause to be roadshown prior to the exhibition and reproduction thereof at the Theater not more than 6 of the feature motion pictures released by it during the first year hereunder and not more than half of the feature motion pictures released by it in any succeeding year hereunder. If more than half of the feature motion pictures released by the Distributor during any year after the first are roadshown, the Exhibitor may, at its option, by giving 60 days' written notice at the Distributor's principal office at New York, New York, cancel this franchise as of the expiration of such 60-day period. A roadshow exhibition shall be an exhibition prior to the general release of the motion picture for one or more weeks at advanced admission prices on a two-a-day policy exclusive of extra shows.

Excess Pictures

7. If the number of sound motion pictures distributed by the Distributor in any one year (August 15th to August 15th) shall be in excess of 52 feature pictures and 52 short subject pictures, respectively, the 5 representatives of the franchise holders of the Distributor shall designate, at least 30 days prior to the commencement of such year, which 52 feature motion pictures and 52 short subjects shall be played at the Theater. If the representatives fail to designate such pictures, the Distributor may designate them. The Exhibitor may, however, by written notice to the Distributor prior to the commencement of such year, elect to exhibit all of such motion pictures in excess of 52.

10. The Exhibitor shall exhibit and reproduce each of the motion pictures provided for hereunder in the Theater on days to be determined as follows: If the Theater is entitled to the first showing in the city, town or zone in which it is situated, the Distributor shall mail to the Exhibitor at least 2 weeks in advance, a notice of the release date of each motion picture provided for hereunder for such city, town, or zone and the Exhibitor shall, within a period of 7 days thereafter, designate the first exhibition date of such motion picture for the Theater, which date shall not be later than 7 days after the release date so designated in such notice. If the Theater is only entitled to exhibit motion pictures subsequent to prior showings in such city, town, or zone, the Distributor shall mail to the Exhibitor at least 2 weeks' notice of the date upon which each motion picture shall be available for exhibition and reproduction by the Exhibitor, consistent with prior runs and/or protection granted to other exhibitors and the Exhibitor shall be required to exhibit and reproduce the motion picture provided for hereunder in the Theater within 2 weeks after such availability.

When Interest is Sold

12. If the interest of the Exhibitor in the Theater is purchased by another exhibitor, or the Exhibitor be merged with another exhibitor, the Exhibitor may at its option within 30 days' operation or control of one or more additional and upon 60 days' written notice to the Distributor at its principal office at New York, New York, terminate this franchise as of the expiration of such 60-day period. The Distributor, however, may terminate this franchise and all rights and privileges herein granted to the Exhibitor without any further liability on its part in the event of such purchase, or consolidation, or disposition of the Exhibitor's interest in or control of the Theater or such other theaters.

13. If the Exhibitor shall erect or acquire the operation or control of one or more additional theaters in the city, town, or zone in which the Theater is located, which theaters have the same run as the Theater, then Exhibitor at the Distributor's option, shall be obligated to exhibit motion pictures released by the Distributor in one of such newly erected or acquired additional theaters designated by the Distributor.

20. If the Distributor is merged, purchased or otherwise acquired by another motion picture distributor, the Distributor and/or such other motion picture distributor may upon 60 days' written notice thereof to the Exhibitor terminate this franchise as of the expiration of such 60-day period.

SCHEDULE

Name of theater..
Location of theater......................................
Zone No............................Key No.................
Seating Capacity...
Trade name of equipment..................................
Disc only...........Film only.............Film or discs...........
Protection...
Run..
Number of successive days to be exhibited................
Minimum admission fee....................................

SUMS FOR LICENSE FEES (INCLUDING SCORE CHARGES) AS REFERRED TO IN PARAGRAPH 2 HEREOF

Feature per $100,000	Short subject per $10,000
Exhibition value..................	Exhibition value................
Sound............Dollars ($ . . .)	Sound.........Dollars ($ . . .)
Silent............Dollars ($ . . .)	Silent........ Dollars ($ . . .)

This franchise applies only to sound motion pictures.
silent motion pictures.

(strike out one)

MOTION PICTURES WHICH MAY BE GENERALLY RELEASED DURING YEAR, AUGUST 15, 1929, to AUGUST 15, 1930

Production number..
Title..

21. At the end of the first and each succeeding year hereunder, both the Exhibitor and the Distributor shall have the right to apply to the five representatives of exhibitors, referred to in paragraph 3 hereof, to make findings and recommendations relative to an adjustment of the schedule of prices provided in paragraph 2 hereof. The said representatives shall have the full cooperation of both parties hereto in obtaining accurate information on which to act. The findings and recommendations of such representatives shall be transmitted to a National Appeal Board consisting of the president of the Allied States Association, a representative of the Distributor, and a third member to be chosen by the other two. In the deliberations of the National Appeal Board a majority vote shall control, and the decision of the Board as to such adjustment shall be binding on the Exhibitor and the Dis-

tributor. Until the National Appeal Board shall render a majority decision this franchise shall in no wise be affected or modified by the application of the Exhibitor or Distributor as above provided.

COMMENTARY: The particular problem confronting the Rainier Theater was one common to a great number of independent theaters. The development of chain theaters had led to an extension of the protection period, to the disadvantage of the independent. It also insured the affiliated theater a prior claim upon the product of the distributor with which it was most closely connected. Moreover, as a result of inter-chain buying relationships, a still further restriction was placed upon the supply of films available to the non-affiliated houses. The case suggests that reliance upon the productions of the several independent producers was not deemed satisfactory as a permanent policy.

The Allied States Franchise Agreement represented a very definite accomplishment on the part of a group of independent theater interests. It offered certain definite and obvious advantages to the smaller producer and to any producer who did not control his own theaters. It also gave very real advantages to the unaffiliated exhibitor; it insured him a substantial and reasonably definite quantity of product which, even though it might not provide for all his requirements, would give a background for his yearly program. Under the conditions prevailing, this was an accomplishment of major significance. Furthermore, the price for each picture was determined separately. This provision met an objection long raised against the sale of pictures in blocks, namely, that good pictures and bad were all lumped together and sold at a figure which did not give adequate consideration to variations in quality or box office value.

The franchise agreement did even more, because the total exhibition value was determined in conference between the distributor and representatives of the exhibitors, and this total figure was then broken down into specific allotments against each theater. This provision was clearly designed to prevent a distributor from placing a fictitious and arbitrary valuation on films to be sold to exhibitors who had committed themselves to purchase prior to the determination of a price. Finally, the agreement provided for a subsequent judicial review of the price charged each exhibitor should any such exhibitor feel that he had been unfairly treated. All these advantages offered the Rainier Theater real incentive to accept the agreement.

At the same time, the agreement presented in this case called for careful scrutiny and should not have been entered into without a full appreciation of its content. For one thing, by accepting the agreement the Rainier Theater would be definitely committed to exhibit

pictures produced by one producer for five years in advance. The argument advanced in the commentary on the Elder Film Corporation case[3] is not without point in this connection. The exhibitor agreed to take all sound motion pictures up to 52 per year. This was quite irrespective of how good or how bad such pictures might be. Considering the variability of quality in pictures commonly produced in the past, both within a single year and also from year to year, the exhibitor might feel that he was forced to take a considerable number of pictures either of distinctly poor quality or very ill adapted to his local market. The fact that he might, under the Allied Franchise Agreement, pay a lower price for such pictures, which it was anticipated would have somewhat less box office value than other pictures, does not solve the difficulty. Poor pictures and pictures not well adapted to particular communities are a poor investment regardless of price.

It should be noted that other difficulties might develop. If the producer decided to make pictures exclusively for the enlarged screen, the exhibitor who for any reason found it impossible to use the larger screen might find himself in rather serious difficulties. It might, however, be safe to assume that the closest of cooperation between producers operating under the franchise agreement and the exhibitor interests could be expected since the interests of the former would become more and more closely allied with those of the independent theaters. Furthermore, every producer can be expected to make every effort to create the very best pictures of which he is capable with the funds and talents available.

In the present instance, the larger the number of franchises sold the more money the producer had at his command. Just what this figure might be cannot be determined at present. It must be remembered that the franchise applied only to sound pictures. A recent survey indicated that of 22,624 theaters in the United States only 10,000 were wired for sound pictures. It may be assumed that a vast majority of the affiliated houses were wired. This would reduce still further the number of theaters available for the Allied States Franchise. Published statements indicate that the particular producer in this case had set a goal of 5,000 franchises. It is believed by the commentator that this estimate was perhaps somewhat overly optimistic. However, between 3,000 and 4,000 franchises might reasonably be anticipated. Under favorable circumstances, this number should provide funds adequate to finance a substantial number of good pictures. There is some question as to whether the estimate in the case to the effect that the independent theaters could provide business for three producers is altogether sound.

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[3] See page 316.

Section 3 in the Franchise Agreement concerning price determination calls for definite consideration. Two particular points may be named. First, with regard to exhibitor representatives who advise the distributor on the exhibition value of each picture, the article states that "the distributor makes no representation that such representatives will be so appointed or will act hereunder. If said representatives are not so appointed or cannot or do not act hereunder, or if said representatives and the distributor fail to agree upon the exhibition value of any such motion pictures, the exhibition of all such motion pictures on which there has been no agreement shall, for the purposes of this franchise, be fixed at three times the negative cost thereof, as shown on the books of the producer . . . " In other words, if the distributor should have good reason to believe that a given picture would not prove a success or that excessive and avoidable wastes had been incurred in producing such a picture, he could, by the simple expedient of refusing to appear or to agree, automatically insure to himself a valuation of three times his given book value of the negative. The opportunities thus bound up are obvious.

Second, the motion picture industry has long assumed that no definite relation existed between negative cost and exhibition value. In the present case, it is assumed that a relationship does exist and that it may be expressed in a definite figure more or less applicable to all pictures produced. It is quite possible that a wholly satisfactory answer to such questions as these can only be found if and when the exhibitors themselves have some special voice in the determination of the production program.

Finally, Section 21 relating to arbitration is of extremely limited application. Appeal may be had to the National Appeal Board "relative to an adjustment of schedule prices." Only by the widest of interpretation could this board arbitrate such questions as violation of protection, failure to deliver, failure to designate play dates, or questions involving the local rejection of pictures on racial or similar grounds. Such claims, however, probably represented well over one-half of all exhibition claims filed in 1928 before the Arbitration Boards. Various reasons may be advanced to explain the omission of any general arbitration provision in this franchise agreement, reasons which cannot be discussed here. The fact of the omission, however, is worthy of note.

The case does not indicate that at the moment the Rainier Theater was in a desperate situation. It was advantageously located. Competition did not exist in the residential districts immediately surrounding the theater. Under existing circumstances, good first-run productions could be obtained from several independent producers. It is not probable that the pictures of the particular producer in this case would be barred from the Rainier Theater should the agreement

be rejected at that particular time. Moreover, it would appear that the position of the theater was such that the franchise agreement possibly would still be open to it at a later date. For this particular theater, therefore, it would probably have been well to postpone making any affirmative answer until some indication had been given as to the success of the experiment.

March, 1930 H. T. L.

Bailey Theater[1]

MOTION PICTURE THEATER

Purchasing Organization—*Joining Exhibitors' Cooperative Purchasing Organization.* The owner of a motion picture theater was asked to join an exhibitors' cooperative association, the purposes of which were to protect the members from the monopolistic influence of one large distributor, to bring about purchasing economies, and to curb unfair trade practices. The owner of the theater believed that its membership in the organization would be warranted by the possibility of effecting savings in film rentals and of strengthening its competitive position.

(1928)

Mr. A. H. Bailey, owner of the Bailey Theater of Toronto, Canada, was asked by the president of the Exhibitor's Co-Operative, Limited, in December, 1928, to become a member of the cooperative association.

The Bailey Theater was built in 1924 in the downtown section of Toronto, a short distance from the main shopping district. The theater had a capacity of 1,000 seats and was, in 1928, the fifth largest theater in the city. Its program was changed on Monday and Thursday of each week. Two feature pictures, or a feature picture and a comedy, with a newsreel constituted the program. Organ music accompanied the program. The price of admission ranged from 10 cents to 35 cents.

The competition met by the Bailey Theater was largely that of three other theaters located within a radius of one mile. One of these, seating 2,600, was part of a large chain and offered the strongest competition. For a top admission price of 60 cents, this theater presented five acts of vaudeville, a feature picture, a short subject, a newsreel, and orchestral selections. The feature picture was changed weekly. The Majestic, an independently owned theater seating 1,200, exhibited a feature picture and a short subject at a price of 35 cents. The Majestic was opened in 1920 and was most favored in location. A third theater, the Sun, also operated independently, had a seating capacity of 400. The

[1] Fictitious name.

Sun Theater was not at all modern. The admission charge was 20 cents and the program included a feature picture, a short subject, and a newsreel, with organ accompaniment. The Sun Theater was the only theater in that vicinity with membership in the Exhibitor's Co-Operative, Limited.

Membership in the Exhibitor's Co-Operative, Limited, originally included 30 independent theaters, unaffiliated in any way with any theater chain or motion picture company. The association was organized in July, 1928; in December there were about 35 members, a majority of which were located in the suburbs of Toronto. Each theater in the association had one vote. The theaters represented had capacities ranging from 400 to 800 seats. Nearly all the member theaters exhibited motion pictures only, and most of them ran double-feature programs. Some ran double bills during the first half of the week only; others changed their programs 3 times weekly.

There were, in 1928, approximately 100 theaters in Toronto with an aggregate seating capacity of 50,000. There had been very little building of theaters during the preceding few years, mainly because of depressed conditions resulting from the World War. General conditions were improving, however, and several new theaters were planned, including one very large house.

The association was formed largely because the motion picture industry in Toronto was rapidly being monopolized by one large distributing company. The immediate cause was the action of a subsidiary of this company in trying to force independent exhibitors to sell their theaters under threats of building in competition or of refusing to supply films. Five or six theaters had been coerced in this manner. The distributing company, through its exhibition facilities and its buying power, controlled the first-run theaters in Toronto and could determine the disposition of nearly all the better films produced. Theater owners were also disturbed by the practice of film exchanges of playing one theater against another to obtain higher film prices. It was believed that some theaters were paying from 50% to 100% higher film rentals than they could afford to pay. A third factor in the formation of the association was what was considered the unsatisfactory manner in which cases were decided by the Film Board of Trade, an unincorporated association organized and maintained by distributors, with membership composed of local managers of the dis-

tributors' exchanges. Theater owners believed that the exchanges were unduly favored in the decisions rendered by this organization on cases brought before it.

The originators of the plan for the Exhibitor's Co-Operative, Limited, believed that an organization of exhibitors would benefit through protection against the distributing company, advantageous buying of films, economy in the purchase of supplies, and joint effort to combat adverse legislation. They realized, however, that a number of similar organizations had failed through lack of a common interest among exhibitors and inability to hold such exhibitors in an organization.[2] All agreed that the idea was practical, and that any difficulty lay with the plans for carrying out the idea.

Any motion picture theater in the Dominion was eligible to membership upon application therefor, upon execution of the Standard Agreement between the applicant and the Exhibitor's Co-Operative, Limited, and filing of the agreement with approved bond attached, and upon paying the admission fees and being approved for membership. The affairs of the Exhibitor's Co-Operative, Limited, were managed by a board of 31 directors, one of whom acted as chairman. Four directors with the chairman constituted an executive committee with power to transact all business and exercise all powers of the board of directors. The four directors were elected annually to serve one year. The officers other than the chairman included a president, secretary, treasurer, and buyer.

After June 30, 1930, the agreement would be automatically renewed from year to year unless the member gave notice in writing of his intention to withdraw from the Exhibitor's Co-Operative, Limited, on the 30th day of June following the giving of such notice. In the event of withdrawal, the member continued to be bound until all obligations under the agreement had been performed by him.

The president of the Exhibitor's Co-Operative, Limited, pointed out to Mr. Bailey that the organization had been successful in stopping the threats of the distributing corporation. He stated that the member theaters had received better terms on the product purchased for theaters which were in opposition to the chain. In

[2] See Independent Motion Picture Exhibitors' Association, Incorporated, pages 616 and 628.

some instances, film rentals had been reduced by 50%, while in all purchases of films, small amounts had been saved. In general, the Exhibitor's Co-Operative, Limited, had united the independent theaters to an extent that had established them as a factor in the Toronto motion picture situation. Inasmuch as some of the theaters had purchased their films prior to the development of the Exhibitor's Co-Operative, Limited, it was believed that more marked success would be forthcoming in the future.

Membership in the association required a membership fee of $200. As the owner of one theater, Mr. Bailey would be entitled to a single vote. A member was bound by contract to do all buying through the Exhibitor's Co-Operative, Limited, both of film and of supplies, and to insure this a bond was required to the amount of his annual film rental. A failure to buy through the Exhibitor's Co-Operative, Limited, rendered a member immediately liable on his bond.

A member presented his planned purchases to the buyer of the Exhibitor's Co-Operative, Limited, on a printed form, without which the buyer had no authority to negotiate. If a member so desired, he could negotiate for the purchase up to the point of signing and present the results to the buyer. The Exhibitor's Co-Operative, Limited, could buy for the exhibitor only what he desired, when he desired it, and at a price which he was willing to pay. It agreed to lease films at a price not in excess of the amount paid by the member for any similar class of film during the year preceding, less 10% thereof. The member agreed to pay to the Exhibitor's Co-Operative, Limited, weekly in advance, from the date of the agreement until June 30, 1930, an amount as above, plus 10% thereof, on all film leased for him by the Exhibitor's Co-Operative, Limited, and to pay 3% on film already leased by him. In the case of film leased in bulk for several members, he would pay such price for the use thereof as might be fixed and determined by the buying committee of the Exhibitor's Co-Operative, Limited. Certain of the profits were returned to the member pro rata with his buying at the end of each fiscal year.

The buyer for the Exhibitor's Co-Operative, Limited, could not be an exhibitor, but was assisted by a buying committee of seven members all of whom were exhibitors. Individual negotiations for each theater were carried on with the exchange. The Exhibitor's Co-Operative, Limited, hoped, however, to buy by

group from each exchange, with no contracts made until all members were satisfied with their share of the purchase. If members were dissatisfied, or two theaters in a zone desired the same product, it was planned to have the buying committee confer with the different members and reach a decision of joint interest. In buying by the group, it was planned to allocate cost from a rate figured at the average of a member's last year's cost per feature. It was further planned for the next buying season to negotiate for all member theaters at one time and in advance.

There were 12 film exchanges in Toronto, all of which were American controlled. Some English films were sold through two of these exchanges. As the center of the film industry in Canada, Toronto was the location of the Dominion distribution managers. Some managers held sufficient power to accept film contracts, while others were required to send such contracts to New York for approval. The attitude of the exchanges, as a whole, was at first unfriendly to the Exhibitor's Co-Operative, Limited, and considerable opposition had been met. Later, a more friendly situation had developed through the knowledge that the Exhibitor's Co-Operative, Limited, was not a movement with the purpose of blocking certain exchanges. The president of the Exhibitor's Co-Operative, Limited, thought that the exchanges would offer little opposition in the future because of the buying power represented by the group of theaters.

In considering a membership in the Exhibitor's Co-Operative, Limited, Mr. Bailey believed that the buying advantages would perhaps be the greatest opportunity for benefit to his enterprise. The Bailey Theater had never been threatened by the large distributing organization and had succeeded in purchasing those pictures, for the most part, which it desired. The large chain theater was controlled by the distributing company and enjoyed first-run protection. The Bailey Theater was content with its second-run protection on the films distributed by this one company. It desired, however, earlier runs on films produced by other companies.

In questioning the president of the Exhibitor's Co-Operative, Limited, concerning the advantages that might be secured in this direction, Mr. Bailey confirmed his opinion that the association had not been enabled to secure satisfactory results on earlier

runs or better protection. The president stated that the association was waiting for increased strength through a larger membership before it would endeavor to improve its position in this respect.

The Bailey Theater required from 150 to 200 pictures per year. Its average annual outlay for film rentals approximated $16,000. Mr. Bailey believed that this figure was too high and had planned to reduce the outlay for the following year. He was not satisfied, however, that the Exhibitor's Co-Operative, Limited, would be able to purchase these films to better advantage than the theater was able to do. The type of picture required was of higher quality than the average picture shown in theaters which were members of the association. There would, therefore, be less opportunity for group buying of such pictures than of the type ordinarily shown. Without group buying, the 10% margin might be greater than the possible decrease in price.

On the other hand, Mr. Bailey realized that the buying power represented by 35 theaters would enable the buyer to negotiate with the exchanges for prices lower than those usually granted to an independent theater. Furthermore, the progress already made by the Exhibitor's Co-Operative, Limited, in bringing the large distributing company into line might enable him to secure a lower rental on the pictures distributed by this company. Film rentals on these pictures had been higher, on the average, than those of any other pictures purchased. Approximately 13% of the Bailey Theater rentals for 1928 had been from this large distributing company. Mr. Bailey was also impressed by the fact that the association had found no difficulty in securing service from all the exchanges without recourse to legal action. There had been no court action by which to determine the legal status of the association. It was believed, however, that legal recognition would be forthcoming.

In addition to securing any possible economies in purchasing films, Mr. Bailey wished to maintain the competitive position of his theater. There was a likelihood that the Majestic Theater through membership in the association or by change of management might be able to strengthen its competitive position. While the Bailey Theater had shown a reasonable profit for a number of years, any disadvantage in competition might easily wipe out the margin under which it was operating.

In January, 1929, Mr. Bailey made application for membership in the Exhibitor's Co-Operative, Limited. His decision was based on the possible savings in film rentals for his theater, and a confidence in the practical manner by which the Exhibitor's Co-Operative, Limited, was endeavoring to secure such economies.

Commentary: From the events presented in this case, it would appear that the Exhibitor's Co-Operative, Limited, instituted a successful attempt at cooperative film buying. The experience should be compared with that of the Independent Motion Picture Exhibitors Association, Incorporated,[3] and also with that of First National Exhibitors' Circuit, Incorporated.[4]

Several distinctive features appear in the situation here presented. Chain theater competition was distinctly less keen in Toronto than in New York City. Further, the independent outlets in the former city were necessary if distributors were to realize anything approaching complete coverage. Again, this organization was effected before the large producer-distributor groups had achieved a position of dominance within this area.

An interesting provision permitted any theater in the Dominion to affiliate with this organization. If this provision were adhered to rigidly, it would open the way for subsequent control by producer-distributor controlled interests. It may be noted also that the experience of First National Exhibitors' Circuit, Incorporated, indicated that it was necessary to protect a cooperative association specifically against the acquisition of such control. It is also of interest to note that while this cooperative organization was apparently successful in obtaining a reduction in average film rentals, it was unable to secure any satisfactory readjustment in the matter of protection.

Solely on a basis of the facts presented in the case, it would appear that Mr. Bailey was well advised to associate himself with the cooperative movement.

November, 1929 H. T. L.

[3] See page 616.
[4] See page 13.

Independent Motion Picture Exhibitors' Association, Incorporated[1]

exhibitors' cooperative association—motion pictures

Purchasing Organization—*Failure of Cooperative Purchasing Association* A group of independent motion picture exhibitors organized a cooperative purchasing association in order to meet the competition of the large theater chains, which were the highest bidders for high-quality first-run pictures. The association failed to operate successfully, for the following reasons: the leading producers either refused to sell to the association or charged excessive prices; lack of a common interest among the members caused incomplete cooperation; and the financial straits of some members caused them to accept offers from theater chains to buy their theaters.

(1928)

In 1928, 80 of the 200 independent motion picture theaters in New York City and Brooklyn organized the Independent Motion Picture Exhibitors' Association, Incorporated, a non-profit organization to buy cooperatively for its members the motion pictures which were to be shown on their screens.[2] The theaters appointed the association their exclusive agent to buy pictures and agreed not to buy pictures direct.

For several years it had been increasingly difficult for independent theaters in New York City and its surrounding territory to secure high-grade motion pictures for first runs, inasmuch as the large theater chains with their greater buying power were able to outbid the independent theaters and secure whatever motion pictures they desired for first runs in their own New York City theaters. Persons in the motion picture industry when referring to a first run in New York City usually referred to the first run outside Broadway theaters. None of the theaters in this association was located on Broadway. The independent theaters had been forced either to show second or third runs of the more popular pictures or to show only the less popular pictures of lower quality.

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[1] See also Independent Motion Picture Exhibitors' Association, Incorporated, page 628.

[2] See First National Exhibitors' Circuit, Incorporated, page 13.

In some instances they believed that they had been forced to pay unreasonably high prices for pictures. The Independent Motion Picture Exhibitors' Association, Incorporated, therefore, had been organized under the leadership of an experienced organizer of cooperative selling associations with the objective of combining sufficient buying power to enable the association to buy high-quality pictures for first runs.

Loew's, Incorporated, which owned the Metro-Goldwyn-Mayer Pictures Corporation, a large producer of motion pictures, operated 52 theaters[3] in Metropolitan New York. Several of this company's theaters were located in the shopping area of New York City and the remainder formed a network of neighborhood theaters. The Keith-Albee Orpheum Circuit operated 30 theaters in Metropolitan New York, most of which showed both vaudeville and motion pictures. The Metro-Goldwyn-Mayer Pictures Corporation sold most of its pictures each year to the theaters of Loew's, Incorporated, for first runs and then to other theaters. Other large producers of motion pictures preferred to sell first to the theaters of the Keith-Albee Orpheum Circuit or of Loew's, Incorporated, and to the individual theaters later, because of the larger purchases made by the theater chains. In New York City the theaters operated by Loew's, Incorporated, and those operated by the Keith-Albee Orpheum Circuit required a sufficient variety of pictures in a year to permit these chains to buy most of the pictures of the leading producers. These two competing chains, with the exception of a few theaters, never showed the same pictures. The exceptions were the lower class theaters of Loew's, Incorporated, which changed their programs every day and thus needed more pictures than those purchased for the better class theaters in the chain. These daily-change theaters bought pictures that had been shown in theaters operated by the Keith-Albee Orpheum Circuit.

There was considerable competition among producers in selling their pictures to the chain theaters. A chain of theaters, such as the one operated by the Keith-Albee Orpheum Circuit, when making its purchases demanded that it be permitted to show the pictures on a first run and usually required that all its theaters, whether they were first-run houses or not, be protected against any showing by a theater outside the chain until the pictures had

[3] *Film Daily Yearbook*, 1928.

been shown by all the theaters in the chain for which they had been scheduled. Most of the large theater chains were composed of first-run, second-run, and third-run theaters. The Keith-Albee Orpheum Circuit operated only first-run theaters in New York. Within the chain the operating manager designated the sequence of showings. A theater chain such as Loew's, Incorporated, in buying a picture for the next subsequent showing after it had been shown at the Keith-Albee Orpheum theaters, also required that its theaters be protected in like manner. Consequently, the independent theaters, which, for the most part, bought as individual theaters and hence could not negotiate for large purchases, were unable to secure any of the pictures which had been sold to the chains until after they had been shown in all the theaters of those chains for which bookings had been contracted. The result was that independent exhibitors were showing the pictures of the leading producers from three to six months after their first appearance in New York. Most distributors supplied enough positive prints in New York City to serve all the theaters of Loew's, Incorporated, in 30 days. However, delays caused by fitting the pictures into the programs of the individual theaters and the necessity of serving some of the theaters of Loew's, Incorporated, after the Keith-Albee Orpheum Circuit prevented the independent theaters from showing the pictures until from three to six months after their first showing.

Mr. Leo Brecher, one of the independent exhibitors who joined the association, operated three motion picture theaters in New York City, among which was the Plaza, a high-class theater at 59th Street and Madison Avenue. He testified before the Interstate Commerce Committee of the United States Senate at the hearing on the Brookhart bill in 1928[4] that he was able to show the pictures of leading producers at the Plaza only after they had been exhibited by a theater three blocks away operated by the Keith-Albee Orpheum Circuit, by Loew's Lexington Theater at 50th Street and Lexington Avenue about half a mile from the Plaza, and by a theater about half a mile west of the Plaza operated by Loew's, Incorporated. In Mr. Brecher's opinion the Plaza was a better class theater than any of the others named. Another of Mr. Brecher's theaters was situated at 107th street and Broadway.

[4] Hearing Before the Committee on Interstate Commerce, United States Senate, on the Brookhart Bill, S. 1667, Feb. 27, 1928, p. 16.

This theater was forced to wait until a Loew theater about a mile and a half away and another chain theater about three miles north had shown a picture before it could secure the picture for exhibition. According to Mr. Brecher, he was unable to obtain the pictures of the leading distributors for either of these theaters until the chain theaters had finished with them, regardless of the price he might offer. Mr. Brecher's third theater was a low-class theater. He testified, furthermore, that each distributor sold first to his own theaters and then to the theaters of other distributors. By a process of trading, a distributor bought the pictures of another distributor for showing in his own theaters and sold his own pictures to the theaters of other distributors. In this manner the independent exhibitors were precluded from securing any pictures from the leading distributors until they had been shown by all those distributor-owned theaters that wanted to buy them.

If a theater were to maintain a high standing in its community, it was essential that the pictures presented on its screen be comparatively new. For that reason many of the better class independent theaters in New York, rather than show old pictures, produced by the leading companies, had purchased the right to exhibit first-run pictures which they did not consider to be equal in quality to those produced by the prominent producers. It was especially important that theaters in New York City show new pictures because most of their patrons watched the news of the latest pictures shown by the theaters on Broadway and could easily attend those theaters.

It was with the purpose of securing newer pictures for the independent exhibitors that the promoters of the Independent Motion Picture Exhibitors' Association, Incorporated, began their endeavors to establish the association in the spring of 1928. The principal objectives of the association determined at the time of its formation were: first, to buy pictures cooperatively, and, it was hoped, at lower prices; and second, to secure more pictures for first runs than had previously been secured by its members. The association also had other general purposes such as the cooperative purchasing of theater supplies and the regulation of new building construction on the part of its members. During the years just before 1928 many new theaters had been built in all the metropolitan cities of the United States until exhibitors in those cities were

confronted with serious problems of overseating. This problem was particularly acute in New York City. To accomplish the chief purposes of the association the organizers planned to unite a sufficient number of independent theaters to enable the association to withhold from the large producers a volume of business large enough to constitute a serious loss of revenue. It was realized that the contract between the association and its members authorizing the association to purchase pictures for its members would have to be absolutely binding and irrevocable if the association were to accomplish its aims.

The promoters were able to interest a large number of exhibitors but found that many of them hesitated to join any association the rules of which would be as binding upon its members as those of this association necessarily would be. Those who organized the association would have been pleased to receive all the 200 independent motion picture theaters in New York City into membership. The by-laws (Section I, Article II) provided that "any person, firm, corporation, joint stock association or partnership owning or leasing and operating any motion picture theater" in New York City might be admitted to membership. The by-laws further provided, however, that the application of each exhibitor desiring to become a member must be approved by the executive committee, by two-thirds of the board of directors, and by the president. An effort was made to persuade all independent theaters to join.

Exhibitors operating 80 theaters actually joined. Thirty of these theaters had virtual control of the exhibition of motion pictures in their zones; that is, within a limited area they were the only theaters or had competition only from theaters of a lower class. Fifty were operating in zones also served by other theaters which were either independent or members of chains. Some of the 80 theaters were housed in modern buildings and catered to a high-class patronage and some had cheaper equipment, a lower class patronage, and lower admission prices. Many of the exhibitors joining the association were not in a sound financial condition. In most cases this position was due to overexpansion. The theaters which joined the association had been paying more than $2,000,000 annually for the motion pictures shown on their screens. It was estimated that all the theaters of Metropolitan New York paid $8,000,000 yearly for pictures.

All exhibitors joining the association, whether at the time of its formation or later, were required to sign an operating agreement which appointed the association their exclusive agent to purchase pictures. The members also agreed that they themselves would not purchase any pictures directly from distributors; a member might, however, buy pictures direct if the Special Committeee on the Purchase of Films gave him permission by an unanimous vote. The members agreed to indicate to the association the pictures they desired and to render to the association reports giving complete information about their past purchases and operating conditions. The operating agreement continued, without right of withdrawal, until January 1, 1931. Members also agreed to be bound by the by-laws. No initiation fee was prescribed for those members joining prior to March 19, 1928, but for those members joining subsequently a graduated scale of initiation fees was prescribed as follows:

March 19, 1928 to March 25, 1928	$100
March 26, 1928 to March 31, 1928	200
April 1, 1928 to April 7, 1928	300
April 8, 1928 to April 14, 1928	400
Thereafter	500

This graduated scale had been adopted to encourage exhibitors to join at once and to prevent those who joined later from reaping without payment the benefit of the pioneering done by the original members.

No dues were prescribed in the by-laws, but by the terms of the operating agreement each member agreed to pay the association 5% of the cost of all the pictures he purchased, at the time he made payment to the distributor for the use of the films, or at the time such payment was due. The members agreed to make this payment on all pictures shown after February 20, 1928, whether or not they were at that time members of the association and whether or not the pictures had been purchased through the association. By this provision the association avoided penalizing the original members to the benefit of those who joined later. At all meetings and elections each member was to have one vote for each theater operated by him.

The by-laws provided that no member could voluntarily withdraw from membership during any period when he was bound

by the provisions of the operating agreement and further that, if membership were terminated by reason of expulsion, resignation, mutual agreement, or otherwise, the exhibitor would continue to be bound by his obligations under the operating agreement and would continue to enjoy his rights under the agreement. The by-laws authorized the board of directors to consent to the assignment or transfer of membership and to accept the assignee or transferee into membership under reasonable rules and regulations established by the board. The by-laws further provided that "no voluntary consolidation or merger of a member corporation, partnership, or joint association shall be deemed a transfer within the meaning of this section, but the merged or consolidated successor corporation shall continue as a member of the association in the place and stead of the original member."

For the refusal or failure of a member to abide by the operating agreement or for his threat to violate it, the operating agreement provided that the association might go into the proper courts and secure a restraining order and an injunction to prevent such action. It further provided that if the member was not prevented by an injunction from violating the agreement the association was entitled to collect, in any proper court, in addition to all costs, liquidated damages for every such violation to the amount of 10% of the net price to the exhibitor of all pictures or properties purchased by that member. The by-laws stated that any member knowingly violating any provisions of the by-laws would be liable to the association for the payment of a fine of $50 for each violation in addition to any other penalties imposed by the by-laws or the operating agreement. The by-laws further authorized the board of directors by a majority of the whole board to suspend a member for a period of time not to exceed one year for violation of the by-laws or any contract between the member and the association. They also provided that the board of directors might recommend the expulsion of a member and that the members of the association in general meeting might, by a vote of at least two-thirds of those present, expel a member, but that such expulsion was not to affect or diminish or enlarge the member's rights or obligations under the operating agreement or any other agreement between the association and himself.

The board of directors, which was to have charge and control of the business of the association, was to be composed of 18 mem-

bers, 9 of whom were to be elected from persons nominated by members representing 9 or more theaters, 5 from persons nominated by members representing from 3 to 7 theaters, and the remaining 4 from persons nominated by those members who represented less than 3 theaters. Four members of the board of directors, together with the president, were to constitute the executive committee, which was to have detailed charge of the affairs of the association. The president, two vice presidents, the treasurer, and the secretary were not required to be members or eligible for membership. They were to be elected by the membership to hold office for one year.

It was provided that the board of directors could contract with the president for his services in that capacity over a period of years but that he was to continue in office as president only if elected to that office each year at the annual election. He was to direct the work of the association and was to cast a vote whenever the vote in a meeting of the board of directors or the executive committee was a tie. He also had certain duties as provided in the "Operating Agreement." It was the opinion of those who organized the association that it required for its successful operation an executive officer who was not a member of the association or among those eligible to membership. It had been their experience that an exhibitor could not handle the affairs of an exhibitor association with equity because he was encumbered with many personal obligations to distributors and to other exhibitors.

The by-laws also authorized a special committee on the purchase of films, which was to be composed of two members of the board of directors, elected by that body, and the president. The two members selected from the board of directors could be changed from time to time. This committee was to purchase all pictures for the members of the association. The first action taken by the special committee for the purchase of films was to gather information about the pictures purchased in the past by the members' theaters.[5] This information showed that the $2,000,000 worth of pictures purchased annually by the 80 members were purchased from producers as follows:

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[5] See Independent Motion Picture Exhibitors Association, Incorporated, page 628.

Paramount Famous Lasky Corporation	12½%
Metro-Goldwyn-Mayer Pictures Corporation	13
First National Pictures, Incorporated	13
Fox Film Corporation	9½
Universal Pictures Corporation	8½
Pathe Exchange, Incorporated	8
United Artists Corporation	3
FBO Productions, Incorporated	6
Warner Bros. Pictures, Inc	7
Hollywood Pictures Corporation*	6
First Division Distributors	5
Commonwealth Pictures Corporation	3
Capital Film Exchange	2
Tiffany-Stahl Productions, Incorporated	3
Seven small distributors	½
	100%

* Hollywood Pictures Corporation was a local distributor holding the local franchise for the sale of the pictures of the Columbia Pictures Corporation.

The committee then asked all members to send in requisitions for the pictures which they needed and would like to purchase for the theatrical season of 1928–1929. A compilation of these requisitions showed that almost every exhibitor wanted to show the pictures produced by the Paramount Famous Lasky Corporation, the Metro-Goldwyn-Mayer Pictures Corporation and the Fox Film Corporation. Preferences or second choices expressed for other products were about evenly divided among all brands.

With this information at hand the committee began to negotiate with distributors to purchase the necessary pictures. Early in the season the Metro-Goldwyn-Mayer Pictures Corporation, a subsidiary of Loew's, Incorporated, submitted to the committee an offer to sell its pictures to the members of the association at a price about 30% higher than had been paid by the members the previous year. The company informed the committee that it could not delay the sale of its pictures in New York City and that the association must accept or reject the offer within a limited time. The association was unable to come to an agreement on price within the time limit set. The Paramount Famous Lasky Corporation and the Fox Film Corporation refused to sell to the association on any terms.

Other distributors, such as the Universal Pictures Corporation and FBO Productions, Incorporated, however, were willing to sell to the association. The committee learned that, despite the fact that the president of the association had notified all distributors of the contract by which members had agreed not to

purchase pictures directly, the Metro-Goldwyn-Mayer Pictures Corporation and other distributors were attempting to negotiate directly with member exhibitors.

The members of the association required more pictures than those sold by the three distributing companies with which it had been negotiating. The committee, therefore, planned to drop negotiations with these three companies and buy enough pictures from other distributors to furnish members with a large part of the pictures needed during the year. With the members thus assured of enough pictures to keep their theaters operating most of the time, the committee would be in a strong bargaining position, when negotiating with the three companies with which it originally had opened negotiations, for the few additional pictures required.

The committee undertook to buy the pictures of Pathe Exchange, Incorporated, and of FBO Productions, Incorporated, which had been listed as second choice by many of the members. Although the committee conducted the negotiations with these two distributors, it settled prices for each member individually and concluded a separate contract for each member. This policy had been necessitated by the desire of the exchanges to write separate contracts for each exhibitor, by the desire of the members to pay for their pictures in terms of exact prices settled with the distributors, and by the incompleteness of the statistical information upon which the committee planned to base the allocation of price among members. Negotiations were concluded whereby the association purchased for certain of its members 12 pictures from FBO Productions, Incorporated, for first run and 18 for second run to follow the Keith-Albee Orpheum Circuit which had purchased them for first run. The committee also bought 25 feature pictures from Pathe Exchange, Incorporated. A comparison with the contracts of the previous year proved that the prices for every theater were the same as or lower than in 1927–1928. A number of the theaters secured better runs than they had been able to obtain in 1927–1928.

While these purchases were being negotiated, a number of members had expressed a desire to be freed from their operating agreements so that they might buy pictures directly. They were fearful that the association might not be able to buy enough pictures to furnish them with complete programs for the year. One

of the members of the association, operating a large number of theaters, began to negotiate with the Metro-Goldwyn-Mayer Pictures Corporation for the purchase of some of its pictures in violation of the operating agreement. The association applied to the New York Supreme Court for an injunction to prohibit the distributor from selling to this member on the ground that it caused the member to violate its contract with the association. This application was refused on July 26, 1928.

In July and August many members of the association were approached by representatives of bankers, by a veteran theater operator, and by the Fox Film Corporation, which were interested in acquiring theaters in Metropolitan New York. Prior to the formation of the association many of the members had been in serious financial difficulty. When these opportunities to sell appeared, many members were persuaded that the easiest way out of their financial difficulties was to sell their equities. The association was not in a position to render financial assistance to its members. Even though better pictures were obtained by the services of the association, many of the members still had to overcome serious financial trouble.

The opportunities to sell appealed to some of the members to such an extent that they lost all interest in the association. The officers of the association found that each week it was increasingly difficult to stir the enthusiasm of the members towards the activities of the association. In view of the difficulties the committee was having in buying the needed pictures, the officers of the association recognized that it would be impossible to accomplish the objectives of the association with a disinterested membership. If an attempt were made to continue the activities of the association and to force members to abide by the operating agreement, it was feared that irreparable harm would be done to members who required immediate financial assistance.

At a meeting of the association on September 21, 1928, the president outlined the difficulties under which the association was operating and suggested that it be disbanded. His suggestion was accepted and the members decided to disband the association on December 1, 1928 and release the members from their obligations under the operating agreement.

COMMENTARY: This case illustrates the circumstances under which a cooperative buying association apparently was not able to succeed.

It would appear from the case that the primary purpose in organizing this association was to secure an adjustment in run. Like the Exhibitor's Co-Operative, Limited, of Toronto, it was unable to make any headway in this direction. The association in the present case had certain elements of strength in the form of organization which did not appear in the organization in Toronto. Legally, its control over affiliated members was stronger. Protection against the intrusion of competitive interests was provided for. In both cases all buying of film was distinctly restricted to the association.

It appears, however, that there was a distinct lack of common interest among the affiliated members in this particular association. It also appears that in spite of legal restraint, this organization was not able to hold the exhibitors together. A number of the members expressed a desire to be freed from their agreements in order that they might buy directly. The evidence is clear that they lacked confidence in the ability of the association to deal with the problems confronting it. It is altogether probable that in certain instances the precarious financial status of some of the exhibitors made it necessary that they obtain aid by selling their theaters, which were thus permitted to pass within the control of established chains. Clearly, the association was not able to render any worth while assistance to financially weak exhibitors. The strength of the various chain organizations in New York also made the competitive problem much more serious than it had been in Toronto. While the decision of the Supreme Court undoubtedly weakened the position of the association very materially, it would appear evident that the association could not prove a success in any event considering the seriousness and far-reaching character of the problems by which it was confronted.

November, 1929 H. T. L.

Independent Motion Picture Exhibitors' Association, Incorporated[1]

exhibitors' cooperative association—motion pictures

Purchasing Organization—*Cooperative Association Formed by Independent Exhibitors to Meet Chain Competition.* A group of independent motion picture exhibitors incorporated as a cooperative association in order to meet the competition of the chain theaters which were able to outbid the independent exhibitors on first-run pictures. The purchase committee of the association collected information from members as to previous buying policies and purchased in accordance with the desires of the majority.

(1928)

In 1928, exhibitors operating 80 of the independent motion picture theaters in New York City and Brooklyn organized the Independent Motion Picture Exhibitors' Association, Incorporated, to purchase cooperatively the motion pictures to be exhibited by its members. Independent exhibitors in Greater New York had experienced difficulty in purchasing early runs of popular motion pictures because of the competition of the large theater chains and their greater buying power. This association, therefore, was organized in an attempt to consolidate the buying power of the independent theaters. All members of the association signed operating agreements by the terms of which they conferred upon the association power of attorney to purchase pictures and agreed not to buy individually any motion pictures directly from distributors or producers. The by-laws of the organization authorized a special committee, composed of two members of the board of directors and the president, to direct the purchasing of pictures. The members of the association agreed to abide by the action of this committee. Early in 1928 this committee made an effort to ascertain what pictures the members desired for the 1928–1929 season and on what terms their needs could be met.

[1] See also Independent Motion Picture Exhibitors' Association, Incorporated, page 616.

For the first year the committee planned to limit its activities to the purchasing of feature pictures only and to permit the members themselves individually to purchase newsreels and other short film subjects. Its first action was to request from all member exhibitors copies of the contracts into which they had entered with distributors during the year 1927–1928. From this source, the committee secured sufficient information to analyze the previous purchases of members. The committee recognized the necessity of analyzing the contracts over a period of several years to get accurate information about the requirements of the members and their relative ability to pay for pictures. It was impossible, however, for most members to send the committee their contracts for years prior to 1927–1928, for the reason that most exhibitors destroyed their contracts after they had finished showing the pictures purchased under the contracts. After all the contracts had been received, the committee checked them with the New York exchanges of several of the distributors to make sure of the accuracy of the information. It was not possible, however, to secure the cooperation of all the exchanges in making this check.

The committee also asked each member exhibitor to submit a written report of the history and current operating conditions of the theater or theaters which he operated. In this report the member was asked to explain in detail the conditions under which he negotiated for pictures; whether the entire year's needs were purchased early in the season or from month to month and whether or not the member was forced by the distributors to purchase an entire block as offered in order to get any of the distributors' pictures. Each member reported the names of the distributors from which he usually purchased, the names of distributors with which he was on particularly friendly terms, the prices asked and the prices paid, the protection secured, the protection to which the exhibitor was subject, the type and condition of the building, the class of patronage, the names of competitors and the nature of the competition, and whether, in the opinion of the exhibitor, business in general was good or bad, and the trend. Most of the exhibitors made these reports in the form of letters addressed to the committee, but a number of them reported by calling on one of the executives employed by the committee and discussing their situations with him. Careful notes were made of each interview.

The members were asked, furthermore, to explain just how the prices for the previous year had been arrived at between the distributor and exhibitor. If a member paid a distributor an average of $100 per picture, it was known that the price originally asked by the distributor doubtless was much higher. The exhibitor was asked to tell how he persuaded the distributor to consider a lower price than that originally quoted and just why, having managed some reduction, he stopped at the price finally agreed upon. In this way the committee secured definite information on the conditions under which the members were buying.

Most of the reports contained information of value to the committee. The bargaining method by which prices were set was common in the industry, but the explanations of the operation of that method indicated what specific factors had weight in settling the bargain between the exhibitor and the salesman of the distributing organization. These factors included the type of theater, the class of patronage, the popularity of the theater, the run for which negotiations were being made, the protection desired, the size of the purchase, and the personal relationships between the exhibitor and the distributor. Many of the members reported conditions which enabled the distributors to bring unusual pressure to bear upon them; a few, however, reported situations in which they were able to bring pressure to bear on distributors. Each member in making this report also indicated whether or not he considered the price finally agreed upon a reasonable one and whether or not he made a profit on the pictures.

The committee knew that if it were to determine accurately what an exhibitor could afford to pay for a picture, it should have at its disposal, in addition to figures showing what the members had paid for each picture during the previous year and their brief statement opposite each picture that it had returned a profit or a loss, other figures showing the actual box office receipts for each picture. It was, however, impossible to secure such information from the members of the association for the reason that all exhibitors jealously guarded their box office figures. They did not want box office figures showing the relative success of different pictures to become known at the offices of distributors, who might use them to force higher prices from the exhibitors. The members of the committee and the executives of the association were so

well aware of this situation that they did not even ask for box office figures.

Other information which should have been available to the committee could have been supplied by statements of operating expenses and profits and ordinary financial statements. It was impracticable to secure these statements because some members did not keep complete records and those who did, had no uniform practice which would have enabled the committee to record comparable figures. The committee found that the only practicable means of determining what the members could afford to pay for pictures was to analyze the previous year's prices and trust that what the members did pay gave an approximate indication of what they could afford to pay. The declarations which the mem-

EXHIBIT I

THEATER CARD USED BY INDEPENDENT MOTION PICTURE EXHIBITORS' ASSOCIATION, INCORPORATED

Form No. 1-Booking

Owner

(Name and location of theater)

Admission Prices

Day	Matinee	Evening
Week Day....		
Saturday.....		
Sunday.......		
Holidays......		

Situation

(Here was inserted a brief outline of the situation and condition of the theater, taken from the exhibitor's report)

PROTECTION

(In this space the committee placed a statement of the protection the theater usually was granted by the distributor and the protection granted to other theaters against this theater)

HOUSE POLICY

Day	Program	Remarks
Monday....................		
Tuesday....................	(Under "House Policy" were indicated the type	
Wednesday..................	of program shown by the theater and the num-	
Thursday....................	ber of times it was changed each week)	
Friday......................		
Saturday....................		
Sunday......................		

TALKING PICTURE MACHINE?

EXHIBIT 1 (Continued)

Fixed Change Dates

(This space was to contain the days of the week on which the theater regularly changed its program)

(Name and location of theater)

PRODUCT PURCHASED, 1928–29

Date	Exchange	No. Days	No. Pictures	Avg. Amt.	Tot. Amt.	Protection	Remarks
	(It was planned to devote this page to the product purchased for the theater by the committee in 1928–29. Under the column headed "Exchange" were to be listed the names of distributors from whom purchases were made. The number of days would be ascertained by multiplying the number of pictures by the number of days each picture would be shown. In the "Protection" column the committee expected to list the number of days' protection granted the theater)						

PROTECTION

1. (Here the protection granted was to be listed in more detail)
2.
3.

EXHIBIT 1 (Continued)

(Name and
location of
theater)

Owner

PRODUCT PURCHASED, 1927–28

Date	Exchange	No. Days	No. Pictures	Avg. Amt.	Tot. Amt.	Protection	Remarks
	(On this page the committee recorded the purchases made by the theater for the 1927–28 season. For explanation of columns see previous page)						

PROTECTION

1. (Here the protection granted was listed in more detail)
2.
3.

Exhibit 1 (Continued)

(In this space the committe drew a sketch map of the neighborhood in which the theater was situated and indicated the location of the theater. It also indicated the location of all other motion picture theaters by the use of the colored crayons listed in the key)

1.	10.
2. (The theaters	11.
3. plotted above	12.
4. were numbered	13.
5. and their	14.
6. names shown	15.
7. here)	16.
8.	17.
9.	18.

KEY:
RED-MEMBER HOUSES
GREEN-CIRCUIT HOUSES
BLACK-NONMEMBER HOUSES

(Circuit houses were those nonmember theaters which were operated by large theater chains)

bers made about the results of their operations during 1927–1928, furthermore, enabled the committee to make some adjustments.

From the information contained in the contracts and the reports, the committee compiled concise statements and tables. The committee first drew from the contracts of each exhibitor a list of the pictures which each exhibitor had purchased, together with the names of the distributors from which they were purchased, the price paid for each picture, and the number of days it had been shown. From this information and the other information contained in the contracts and the exhibitors' reports, the committee compiled a report of each theater which was recorded on a four-page folder called a "Theater Card," having the arrangement shown in Exhibit 1.

The committee also arranged the information obtained from the contracts in the form of tables showing the purchases made from each distributor. The contracts were placed in two groups, the first of which contained those contracts covering the original purchases made each year and the second the subsequent purchases made from time to time during the year. Most distributors listed their pictures in the three classifications, specials, program pictures, and westerns. The bulk of the productions released by each distributor each year was composed of program pictures. These pictures usually were of average quality and formed the basis of the exhibitors' programs. Specials were pictures of exceptionally high quality. A distributor seldom released more than 5 or 10 specials a year. Westerns were pictures with western settings depicting stories of adventure and action, and were of a quality below that of the program pictures. The committee arranged its information in six tables for each distributor as follows:

Group 1: 1. Specials bought in original purchase.
2. Program pictures bought in original purchase.
3. Westerns bought in original purchase.

Group 2: 4. Specials bought in subsequent purchases.
5. Program pictures bought in subsequent purchases.
6. Westerns bought in subsequent purchases.

Each of these tables had the following column headings:

Theater Name	No. of Pictures	Average Price Per Picture	Number of Picture Days	Average Receipts Per Day	Total Rental

The number of picture days was obtained by multiplying the number of pictures by the number of days each picture was shown.

When the committee had assembled and tabulated all the information received from the exhibitor members, it made a thorough analysis of this information. It found that the 80 theaters had paid in 1927–1928 about $2,000,000 for the pictures shown upon their screens. It was estimated that all the motion picture theaters of New York City paid a total of approximately $8,000,000 per year for pictures. The feature pictures exhibited in the 80 theaters were bought in about the following percentages from the distributors listed:

Paramount Famous Lasky Corporation	12½%
Metro-Goldwyn-Mayer Pictures Corporation	13
First National Pictures, Incorporated	13
Fox Film Corporation	9½
Universal Pictures Corporation	8½
Pathe Exchange, Incorporated	8
United Artists Corporation	3
FBO Productions, Incorporated	6
Warner Bros. Pictures, Inc	7
Hollywood Pictures Corporation*	6
First Division Distributors	5
Commonwealth Pictures Corporation	3
Capital Film Exchange	2
Tiffany-Stahl Productions, Incorporated	3
Seven small distributors	½
	100%

* Hollywood Pictures Corporation was a local distributor holding the local franchise for the sale of the pictures of the Columbia Pictures Corporation.

For the purpose of analysis more attention was given to the original purchases than to those made later in the year because the association believed that the original purchases gave a more accurate picture of the normal relations between the distributors and the exhibitors. At the beginning of the year an exhibitor usually made his largest purchases with which to organize his program for the year. At that time the distributor was just beginning his season with new pictures and was trying to make his principal sale of the year to each exhibitor. Later in the year the exhibitor usually bought only to fill in his program. The distributor, on the other hand, frequently was willing then to make a compromise; a sale at that time was not of much importance to the distributor since it would contribute only a small addition to income on a picture that already had returned most of its income from its early runs. It also was true that subsequent purchases were often made as adjustments by distributors, permitting exhibitors to cancel pictures for which they had previously contracted, on the condition that other pictures be substituted.

In the experience of the members of the committee, exhibitors who were able to buy pictures early in the selling season for about \$100 each could buy pictures of the same quality later in the season for the same run for about \$75. To take advantage of this lower price, however, the exhibitor had to risk not being able to secure a sufficient number of pictures to keep the theater in continuous operation, and take the chance that when he did buy he might not be able to get any pictures except those which had not been sold to a competitor. The committee found from its analysis

that one theater bought 22 pictures in a block at the beginning of the selling season for an average of $139.50 each and later in the same selling season was able to purchase 16 similar pictures in a block at an average price of $69.68 each. Inasmuch as the committee wished to have a true basis of comparison, it decided to use the original purchases for most of its estimates and to use the subsequent purchases only as a means of checking the other purchases.

Since the association expected to purchase pictures for all its members in mass contracts, the committee worked out a method of allocating prices between theaters on contracts which covered pictures to be used by more than one theater.[2] It was believed that if the basis of allocation were made the prices paid by the exhibitors during any one year, such as 1927–1928, for which the committee had records, the committee would be favoring the members who had secured particularly favorable prices during that year and penalizing members who had paid unduly high prices. If, on the other hand, it attempted to allocate prices in accordance with the members' ability to pay, the committee would be undertaking an almost impossible task and at the same time be penalizing the efficient theater operator who was in a measure able to pay the higher prices because of his own efficiency. If the price were allocated to theaters operated by members, in proportion to the 1927–1928 contracts between the distributor and such theaters, it was feared that the member who had special personal connections with that distributor would be favored. Such uneven allocation, of course, would tend to be compensated for in the price allocation for the pictures of other producers.

The committee was convinced that the only equitable method of allocating price would be to compute, from the average prices paid over a period of three or four years, the percentage which each member's purchases bore to the total purchases of all members, and to adjust the percentages as seemed necessary in view of changed conditions. This method was impossible, however, because the information at the command of the committee did not

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[2] Several years before, a group of theaters in New York City had organized a cooperative buying association similar to the Independent Motion Picture Exhibitors' Association, Incorporated. This cooperative organization had purchased pictures for all its members under one contract and after the completion of the contract attempted to allocate the price among its members. Disagreement over the allocation of price led to the disbanding of the organization.

cover any year except that of 1927–1928. Other methods not being at hand, the committee decided to allocate price on the basis of the prices paid by each member for the pictures used by him in 1927–1928, with certain adjustments for changes in conditions.

When the announcements of the 1928–1929 productions were made by the distributors, the committee asked the members to submit requisitions showing what pictures they would like to have purchased for them. The distributors had sent advertising material to each of the exhibitors as usual and also had sent advertising material to the association. The requisitions sent in by the exhibitors stated the pictures desired, the prices at which the exhibitor thought they should be furnished to him, and the protection desired. The members almost without exception indicated on their requisitions that their first choice was for the pictures of the Paramount Famous Lasky Corporation, the Metro-Goldwyn-Mayer Pictures Corporation, and the Fox Film Corporation. Their subsequent choices were divided evenly among other distributors. Each exhibitor was requested to state the details of the protection he had received during the previous year and what protection he desired for the ensuing year. While the committee preferred to receive these requisitions in written form, many of the members called at the offices of the association and explained verbally what pictures they would like to secure for 1928–1929 and the conditions desired.

The committee then took each requisition and compared it with the records of the previous year's purchases of that member and determined what would be an equitable price at which to buy for him. If the conditions of protection, the type of pictures, and the runs requested were about the same as in the year before, the committee estimated that it should be able to make the purchase for about the same price per picture. If these conditions differed, adjustments were made in the committee's calculations.

After the committee had analyzed all requisitions and had totalled the number of pictures requested and their prices, it then began to negotiate with the distributors. The committee was supplied with sufficient information to enable it to negotiate either in terms of a blanket price for the entire group of theaters desiring a picture, or at a separate price for each theater, or at a price per day per picture, whichever proved most favorable as the negotiations advanced. It expected that a more favorable price

might be secured if the negotiations were carried on in the terms of a blanket price.

When the committee first indicated that it was prepared to make purchases for the ensuing year on behalf of its members, salesmen of most of the leading distributors called. As negotiations proceeded certain distributors became less friendly. The Metro-Goldwyn-Mayer Pictures Corporation, when it learned that the Independent Motion Picture Exhibitors' Association, Incorporated, wished to buy its product, offered the product at a price too high for the association to accept and when the offer was not accepted, sold to competing theaters. The Fox Film Corporation and the Paramount Famous Lasky Corporation did not send representatives and refused to sell to the association.

The committee then reported these facts to the members and informed them that it was prepared to negotiate with companies that had been the members' subsequent choices. Upon consulting the members, the association found that they could not agree upon the product to be purchased. After discussion with members and preliminary negotiations with distributors the committee was able to open negotiations on a firm basis with FBO Productions, Incorporated, and Pathe Exchange, Incorporated. These two companies were under the same management. The association selected them because their pictures were of satisfactory quality and because the officers believed they constituted a group with which it would be advantageous to transact business. If the association furnished these companies an assured outlet for their pictures in New York City, it could expect to be assured in return a constant supply of their pictures. Contrary to the actions of the first three distributors, these companies had expressed a desire to sell their pictures to the association.

It was learned that FBO Productions, Incorporated, had sold 18 of its 30 program pictures to the Keith-Albee Orpheum Circuit but that it had not sold any to the theaters of Loew's, Incorporated. The other 12 pictures had not been sold in New York City for any run outside of the theaters on Broadway. Negotiations were concluded whereby the association purchased 12 pictures from that company for first run and 18 for run immediately after the Keith-Albee Orpheum Circuit. Negotiations also were successfully completed for purchasing 25 feature pictures from Pathe Exchange, Incorporated. Although the

committee conducted the negotiations with the two distributors, it negotiated individually for each separate theater, set prices individually, and signed a separate contract for each theater. This action had been necessitated by the attitude taken by many members.

Several members refused to buy or use the pictures of these two distributors upon which most of the other members had agreed. Most of the members did not entirely trust the methods of the committee and preferred to pay for their pictures in terms of an exact price set for each theater rather than in proportion to such percentage of the general contract as would be determined by the committee. Many members listed on their requisitions for the pictures of these two distributors prices below those at which they themselves normally could buy. Such action, of course, made the negotiations with the distributors more difficult, and forced the committee to negotiate with the two distributors theater by theater. The distributors themselves preferred to conduct negotiations with each theater as a unit. Contracts, however, were satisfactorily completed. A comparison with the contracts of the previous year proved that the prices for every theater were the same or lower than in 1927–1928. In no case were they higher. A number of the theaters secured better runs than they had been able to get in 1927–1928.

After several months of activity it became apparent that the association would be unable to continue because of lack of earnest support on the part of members of the association.[3] A meeting was held on September 21, 1928, at which it was decided to disband on December 1 and relieve members from their obligations under the operating agreement.

Commentary: Two particular issues arise in this case, the first relating to the adequacy and the use of the information requested by the Independent Motion Picture Exhibitors' Association, the second relating to the causes of the failure of the experiment.

It may be noted that the association had final jurisdiction in all matters relating to the buying of the pictures. This was wise. The association also proceeded properly in its attempt to analyze the film contracts for previous years. It showed, too, excellent judgment in its attempt to obtain a report on other conditions which affected each particular theater. It may be noted, however, that full confidence

[3] See Independent Motion Picture Exhibitors' Association, Incorporated, page 616.

of the members was not present. Exhibitors would not give up box office figures even to their own association. Nor were any of the usual financial statements helpful in determining what the exhibitor could afford to pay.

In the absence of figures for several years past, the data for 1927 to 1928 probably provided the most satisfactory basis for procedure, assuming always that subsequent readjustments were to be made as additional facts became available. Inadequate data, however, and the necessity of proceeding on a somewhat temporary basis were unfortunate, since these factors had direct bearing upon any attempt which the association might make to secure a satisfactory price. As is indicated in the case, inability to handle this problem of price had ruined at least one other similar attempt.

Whatever the specific mode of procedure may have been, however, the real weakness in the organization was so apparent as to preclude the possibility of success. Two of the large distributors whose product was distinctly preferred by the members refused to deal with the association on any terms, and a third made its prices too high for the association to accept. The attitude of a number of the members necessitated individual contracts, prices, etc., rather than an association arrangement. Other members did not trust the buying committee, for reasons that are not made clear. Some members refused to buy any pictures of the two distributors who apparently were willing to deal with the association. Other members failed to deal fairly with the association in citing prices which they were willing to pay for films. For these reasons and for those suggested in the previous case, no effective results followed.

November, 1929 H. T. L.

Arbitration in the Motion Picture Industry

Arbitration—*Compulsory Arbitration Clause in Contract Subject of Government Investigation.* In 1928, representatives of the Motion Picture Producers and Distributors of America, Incorporated, and of the various exhibitor associations, agreed upon a New Standard Exhibition Contract, which contained a clause that waived the right of trial by jury in favor of compulsory arbitration for the settlement of trade disputes. In the same year the Federal Department of Justice investigated the arbitration agreement, contending that compulsory arbitration was forced upon the exhibitors without their consent; that certain provisions of the contract were unfair to independent exhibitors; and that the system was in contravention to the law.

(1928)

In 1928, representatives of the Motion Picture Producers and Distributors of America, Incorporated, and of the various exhibitor associations agreed upon a new Standard Exhibition Contract, a part of which was a clause that waived the right of trial by jury in favor of compulsory arbitration for the settlement of trade disputes. This contract had been preceded by two other contracts, one adopted in 1922 and one in 1926, both of which had contained provisions for compulsory arbitration. In 1928, the whole arbitration structure erected in this industry was attacked by the Federal Department of Justice,[1] which contended that the 10 distributors[2] who controlled 98% of the domestic film supply had effected a restraint of trade through the enforced use of the New Standard Exhibition Contract and the arbitration clause attached thereto. The suit was filed in the spring of 1929, against 32 Film Boards of Trade, against the Motion Picture Producers

[1] Senator Smith W. Brookhart of Iowa had introduced into Congress a revision of a former bill that sought to regulate certain aspects of motion picture distribution. The revised bill included a provision restricting arbitration as then practiced. See *United States of America, Petitioner* v. *Paramount Famous Lasky Corporation, et al., Defendants,* in District Court of United States for Southern District of New York, in Equity No. 45–100.

[2] Paramount Famous Lasky Corporation, Metro-Goldwyn-Mayer Pictures Corporation, First National Pictures, Incorporated, Universal Pictures Corporation, Fox Film Corporation, Pathe Exchange, Incorporated, FBO Productions, Incorporated, Warner Bros. Pictures, Inc., United Artists Corporation, and Educational Film Exchanges, Incorporated.

and Distributors of America, Incorporated, and against the 10 distributors.

Prior to 1922, disputes arising from the distribution and exhibition of motion pictures had been both many and costly. Exhibition contracts used by one distributor differed from those used by another. Not infrequently the contracts used by the same distributor varied. Consequently, every exhibitor was compelled to examine each specific contract in order to learn its terms. The significance of this fact may be more readily seen from an example. One of the most troublesome clauses in an exhibition contract was that which dealt with the selection of play dates. If an exhibitor had contracts with 8 or 10 different distributors, he would find it necessary to "examine each contract separately as soon as a picture under it became available in order to comply exactly with the provisions of that contract relating to the designation of play dates. Failure to do so often would result in breaches of contract."[3]

The average exhibitor used each year about 200 feature pictures and about 350 short subjects. Since there were some 22,000 theaters being operated, and since no one distributor released more than 75 features and 100 short subjects, in practice there were between 500,000 and 750,000 contracts for exhibition of pictures entered into annually between distributors, on the one hand, and the operators of the theaters, on the other. Under these contracts there were about 10,000,000 deliveries of pictures each year from distributor to exhibitor.

While the volume of business prior to 1922 was not so great as it was in 1928, there were, nevertheless, innumerable disputes between distributors and exhibitors. Some of these disputes arose through honest differences of opinion concerning the terms of the contract; others arose as a result of unscrupulous practices on the part of one party or the other. Sometimes pictures delivered on open account were never paid for. Sometimes a picture was not returned promptly to the distributor after exhibition, thereby causing the distributor to lose the rental provided for under contract with the next exhibitor scheduled to exhibit the picture. Sometimes an exhibitor would show a picture at a theater not named in the contract, exhibiting it at two theaters, for

[3] See *Answer* of Paramount Famous Lasky Corporation, et al., Defendants, to United States of America, Petitioner.

example, when he had paid for the right of exhibition at only one. Thirty-five to forty per cent of the total amount of rentals contracted for was never paid.

Distributors naturally undertook to protect themselves. It became a common practice for a distributor, at the time of the signing of the contract, to demand payment of an advance deposit amounting to 25% or more of the aggregate rentals to be paid under the contract, such deposits being applicable on account of any sums due the distributor or on account of any damage caused by the exhibitor's breach of contract. Prior to 1922 the distributors held, under these clauses, over $5,000,000 of the exhibitors' money paid in the form of advance deposits. The maintenance of this advance deposit system was obviously expensive for the exhibitor. It made him feel that he was financing the distributor unduly. Occasionally a distributor failed and the exhibitor lost his money. The situation became so serious that in several cases state legislatures enacted laws for the purpose of protecting the exhibitor deposits. Such statutes, however, were not generally very effective.

The contracts frequently authorized the distributor to terminate the contract or to withhold the delivery of pictures in the event of the exhibitor's defaulting in the performance of any condition specified therein. There were contracts which authorized the distributors to demand additional cash payment at any time. For instance, if there was a dispute concerning a play date or a damaged or lost print, the distributor might demand a cash payment, either withholding pictures or terminating the contract if it were not paid. Such clauses naturally created ill will and caused too much litigation, especially since the decision as to whether a part of the deposit should be withheld by the distributor on account of an alleged breach of contract by the exhibitor or whether the delivery of pictures should be suspended or the contract terminated, always rested with the distributor, to whom the contract gave arbitrary powers in these matters.

In some cities the local managers of distributors' exchanges had organized what were known as F. I. L. M. Clubs. These clubs constituted an agency through which the exchanges pooled their information concerning the credit standing and business practices of their customers. When it had proven that an exhib-

itor was addicted to "questionable" business practice, all the members of the local F. I. L. M. Club refused to transact business with him. In some cities these clubs requested exhibitors to appear before a board of three of their members to defend themselves.

In the spring of 1922, the Motion Picture Producers and Distributors of America, Incorporated, met with various representatives of exhibitor associations and adopted a Uniform Contract which became effective in April, 1923.[4] In this contract was a clause which required that, in the event of a dispute, both parties to the agreement, before resorting to a court to determine their rights thereunder, submit such controversy to a Board of Abritration and that they comply with the decision of that board. The clause provided further that such decision should be enforceable in any court of competent jurisdiction; that the right of trial by jury be waived in any issue arising under the contract; and that the findings of the board be accepted as conclusive by both parties to the contract.

It therefore became incumbent upon each exhibitor when he signed the Uniform Contract to agree at the same time to the form of arbitration specified therein.

Experience in the use of the Uniform Contract indicated that there was need for certain changes in it. Accordingly, in 1925 and early in 1926, conferences were held between distributors and exhibitors for the purpose of improving it. On February 6, 1926, the Standard Exhibition Contract was agreed upon, together with the rules and regulations relative to arbitration. It became effective on March 1, 1926, and became the commonly accepted form of contract. At the conclusion of the conference in February, an Advisory Committee was appointed to complete the work that had been undertaken. This committee consisted of the president of the Motion Picture Theater Owners of America, the president of the Theater Owners' Chamber of Commerce, the president of of the Motion Picture Theater Owners of the Northwest, and Mr. E. V. Richards, an exhibitor operating a large number of theaters in the South and not a member of any association. As a result of the work of this committee, the distributors withdrew certain conflicting clauses from the contract and in December,

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[4] See *Yearbook of Arbitration*, 1927, p. 605.

1926, the committee adopted substitute rules and regulations relative to arbitration.

In September, 1927, conditions still being unsatisfactory, the Federal Trade Commission suggested a trade practice conference. Exhibitors from each of the 32 zones who were not affiliated with any producer-distributor were invited to elect or appoint two delegates, neither of whom should be an affiliated exhibitor. Practically all the producer-distributors were represented. There were present at the conference 43 producer delegates; 25 distributor delegates in person, and others represented by proxy; 66 unaffiliated exhibitors; and 59 affiliated exhibitors. The conference voted, with but one representative dissenting, to support arbitration. A contract committee, consisting of three producer-distributor delegates, three affiliated exhibitor delegates having no right to vote, and three unaffiliated delegates, was appointed. It met in January and February, 1928, and agreed upon the New Standard Exhibition Contract in its existing form. It further agreed that the Rules of Arbitration should not be amended thereafter without the approval of the contract committee. This new contract became effective in May, 1928.

The arbitration article in the three contracts, namely, the Uniform Contract of April, 1923, the Standard Exhibition Contract of March 1, 1926, and the New Standard Exhibition Contract, was practically the same. The first Standard Exhibition Contract eliminated the minimum penalty which might be imposed upon exhibitors; otherwise the arbitration clause remained identical. The New Standard Exhibition Contract made no change except that it provided for filing with the American Arbitration Association and added a provision that fixed definitely the time within which a distributor must comply with an award against an exhibitor. This time limit was determined according to the location of each Board of Arbitration; thus in New York City it was 7 days, in San Francisco 30 days, in Boston 10 days, and in Minnesota 20 days. There were, of course, numerous changes in the contract itself which indirectly affected the problem of arbitration. "The official legal status of the Film Boards was established in August, 1926, when the United States Department of Justice, following an exhaustive investigation, declared that the operation of the board was legal except for a few certain practices in isolated territories. This probe started in February, 1925,

when the M.P.T.O.A. at its Milwaukee convention flayed the workings of the Boards, declaring them illegal."[5]

The Rules of Arbitration in the New Standard Exhibition Contract made provisions for the organization under which arbitration was to function. Trials were to be heard by the Film Boards of Trade. There were in 1929, 32 Film Boards of Trade organized in as many cities in the United States under the auspices of the Motion Picture Producers and Distributors of America, Incorporated. These boards were not incorporated. They were local in character, and were largely governed only by such rules as they themselves adopted. Membership in them was composed chiefly of the managers of the local exchanges of the various national distributors. Representatives of local distributors were asked to join and in many cases did join. These Film Boards of Trade were organized for the purpose of representing the distributors in all matters of common interest in their respective local communities. Their functions were by no means confined to matters of arbitration. Among other things each Film Board of Trade appointed what was known as a Credit Committee,[6] whose function it was to report to its board upon the credit standing of the new proprietor of any theater whose ownership had changed. At the time these local boards were organized, there was also created in New York, as a part of the Motion Picture Producers and Distributors of America, Incorporated, a head office for the purpose of exercising some supervisory power over them. This office appointed a secretary for each board who was directly responsible to the New York office. It also supervised the work of the boards, arranged with the home offices of the local exchanges for their financial support, and extended such advisory assistance, particularly legal, as might be required.

As has been indicated, one of the functions of these various local Film Boards of Trade was to select the distributor representative for the local Arbitration Board. The exhibitor members of the Arbitration Boards were usually chosen by the local exhibitor associations. In the absence of a local exhibitors'

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[5] *Film Yearbook*, 1928, page 759.

[6] The legality of these Credit Committees had also been attacked by the Department of Justice. The case was heard in the United States District Court of New York immediately preceding the suit involving the legality of the arbitration system.

association, the president of the Film Board of Trade requested the president of the local Chamber of Commerce to appoint the exhibitor representatives. If this plan failed, the same request was made to the mayor or other chief executive of that city. If this also failed, appeal was then made to the president of the American Arbitration Association. The Boards of Arbitration consisted of six persons, three of whom were members of the Film Boards of Trade and the other three, proprietors or managers of theaters not owned or controlled by producers or distributors. The term of office of the arbitrators was for one month or until their successors were appointed. In cases in which the six arbitrators could not reach a decision, a seventh arbitrator, not connected with the motion picture industry nor in any way interested in it, was called in. There were relatively few cases in which this procedure was necessary. No member of the Board of Arbitration might act in any controversy in which he had an interest. The maintenance cost of the boards was divided equally between the Film Board of Trade and the local exhibitors' association. As a matter of fact, these costs were almost negligible, since either the secretary of the Film Board of Trade or the secretary of a local exhibitors' association usually performed all the clerical work.

The procedure in trials before the Film Boards of Trade was extremely informal. In these trials the exhibitor was entitled to representation by attorney, should he so desire. In the event that he was unable to be present, he had the privilege of presenting a written statement and argument.

The question of penalties had particular significance. Speaking broadly, the following provision held. Should the exhibitor fail to submit to arbitration or to abide by any decision, any distributor might, at his option, demand as security for the performance by the exhibitor of all *existing* contracts between the two parties, payment of an additional sum not to exceed $500 under each contract. This sum might be retained by the distributor until all such contracts were completely performed, and then applied, at the option of the distributor, against any sums due for damage determined by the Board of Arbitration. Damages should not exceed the actual value of the print plus the rental contracted for, or in any case exceed $500. The remainder, if any, should be returned to the exhibitor. In the event of the exhibitor's failure to pay the additional sum within seven days

after demand, the distributor might, by written notice to the exhibitor, suspend service until the sum was paid and/or terminate all existing contracts. If service was suspended for 10 days. the distributor might then cancel the contract.

On the other hand, in case the distributor failed to comply with the rulings of the Arbitration Board within the number of days specified, the exhibitor might, at his option, terminate any existing contract with the distributor. In addition, the distributor should not be entitled to redress from any Board of Arbitration on any claims against any exhibitor until the distributor should have complied with the decision of the board,[7] and there should be added to the amount of the award 10% thereof for each 30 days after the time for compliance therewith.[8]

Evaluated from a statistical standpoint, arbitration had brought about commendable results. Since its inception 39,287 cases involving $10,840,623 had been acted upon. The total number of claims filed from 1924 to 1928 inclusive was 84,509; these represented a total amount of $18,241,353. In 1928, according to Mr. Will Hays, the plan proved more successful than in any previous year in its history. During that year 23,869 cases, involving $6,503,474 were filed. Of this number, 12,201 were settled before the date of hearing; 833 claims totaling $235,617 were decided against distributors; 6,471 cases totaling $2,593,900 were decided against exhibitors; and 629 claims were dismissed. Of the total number of claims settled during 1928 only 28 required a seventh arbitrator. One hundred and thirty-four cases were carried to court after submission to arbitration.

Despite this apparently formidable record, dissension on the part of the independent exhibitors had become widespread in 1928. Mr. W. A. Steffes, president of the Northwest Exhibitors' Association and one of the most influential exhibitors, refused his members permission to sit in on cases involving certain distributors until adjustment had been made. *Harrison's Reports* condemned the entire plan on the ground that it divorced the exhibitors from right to trial by jury. Both Frank Rembusch, National Exhibitors' secretary, and Judge Cohen, eminent Pittsburg jurist, contended that it was a scheme used principally for distributor protection. In numerous cases the exhibitors had ignored

[7] Article 18, New Standard Exhibition Contract.
[8] Taken from Rules of Arbitration.

summons to arbitrate. A majority of the spokesmen for the exhibitors contended that the New Standard Exhibition Contract had not been sanctioned legitimately, and that they were forced to accept it against their better judgment.

The attacks on compulsory arbitration may be grouped into three main classes. First, that "the Plan (including in this term the Standard Exhibition Contract, the Arbitration Laws and the Rules of Arbitration) constitutes an unreasonable restraint of trade" in that it placed "an unreasonable obstruction in the way of the normal carrying on of interstate commerce in films;"[9] second, that the machinery which was set up for the operation of the plan for compulsory arbitration was inadequate and unsatisfactory; and third, that prejudice against the interests of the independent exhibitors was inherent in any form of compulsory arbitration that had yet been suggested.

The attack by the Department of Justice centered around the first of these charges. Broadly put, the charges were that compulsory arbitration was part and parcel of the Standard Exhibition Contract, that no pictures were sold except under this contract, that interpretative rules were prepared and distributed by the defendants for governance of the local Film Boards of Trade, that these boards distributed in the United States approximately 98% of all motion picture films distributed in this country, that these local Film Boards of Trade and the Boards of Arbitration had "supplemented and exceeded" the rules by various "understandings and agreements without knowledge and against the general instructions of the defendant exhibitors and of the defendant associations," and that the plan as a whole constituted a means of unduly restraining the interstate commerce in films.

More specifically, the argument of the government fell into three well-defined phases. First, that compulsory arbitration was forced upon the exhibitors against their will; second, that certain provisions of the Standard Exhibition Contract were in themselves unfair to the independent exhibitors; and, third, that in consequence the system was in contravention to the law. These three arguments may be considered in turn.

The first of the allegations stated that compulsory arbitration was forced upon the exhibitors without their consent and that

[9] See Reply Brief of United States in case of *United States of America* v. *Paramount Famous Lasky Corporation, et al.*, In Equity, No. 45–99.

their approval was at no time given either to the Standard Exhibition Contract as a whole or to the clause providing for compulsory arbitration. It could not have been denied that the exhibitors had condemned the contract at the time of its ratification even though those voting had accepted it as the best available. The fact remained, however, that it had been in use since its adoption in 1928. Furthermore, it had been brought about primarily at the request of the exhibitors, who were unanimously opposed to the deposit system.

The second argument of the government centered around certain clauses in the contract and in the Rules of Arbitration. The government asserted that this contract was "unilateral, unfair, and discriminatory in that most of the rights therein are and have been given to the distributors and most of the penalties and obligations therein are and have been imposed on the exhibitors." It was further asserted that "the rights given the distributors and all the obligations imposed upon the exhibitors have been made very definite and explicit, while the principal rights of the exhibitors and most of the liabilities imposed upon distributors are indefinite and uncertain." And finally, it was alleged "that the so-called arbitration system in the motion picture industry primarily is a system for the collection under duress or threat of duress of debts due to distributors from exhibitors . . . and that the system departs widely from the usual principles of commercial arbitration in that the procedure and the principles of law requisite to the decision are prescribed and the enforcement of the decision is controlled by the dominant factor in the industry, the distributors."[10]

Particular analysis was made of Articles 2, 3, 4, 8, 14, and 19 of the 1928 contract.

Article 2 provided among other things that the photoplays designated in the contract schedule must be exhibited "during the period of one year commencing with the date fixed or determined as hereinafter provided." In view of the general absence from the contract of specific play dates, it was apparent that this provision was inserted for the protection of distributors against negligent exhibitors seeking by means of dilatory tactics to avoid fulfilling their contracts.

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[10] Government brief.

The method of prescribing play dates under the contract was somewhat complicated. Very briefly the provisions were as follows. A distributor was required to mail to an exhibitor notice of availability 15 days in advance. The exhibitor, within 14 days thereafter, was to select play dates falling within a 30-day period from the time of availability to him. If the dates so selected were not open to the exhibitor, one of two procedures was followed. The exhibitor was to select other dates within this period if any were open. If he failed to do so, the distributor was to designate the dates, giving the exhibitor 14 days' notice thereof. These dates had to be within a period of not less than 2 nor more than 6 weeks from the date first selected by the exhibitor. If no dates were open within this period of time, the exhibitor was to select dates not less than 2 nor more than 6 weeks after the 30-day period. If none were so selected, the distributor was then to designate the dates, within the same period on which the pictures were to be shown. If for any reason the exhibitor at any time failed to designate dates within the time limit allotted him for such selection the distributor was to name the play dates.

The clause in Article 2 was interpreted by Gabriel Hess, general attorney for the Motion Picture Producers and Distributors of America, Incorporated, to mean that should the exhibitor fail to take advantage of availability dates set by the distributor at a reasonable time after the picture had been released, the distributor could not be penalized because that photoplay had not been exhibited within the year.

The government concluded,[11] however, that it was equally important to the exhibitor that he be insured promptness of availability, both in order that he might arrange his free playing time for the new pictures, and in order that he might capitalize as largely as possible on the timeliness of the current showings. The government also contended that subsequent-run exhibitors, because of delayed notices of availability, had been forced to run pictures several years old.

Article 3, which was designed to prevent bicycling, was also attacked by the Department of Justice. The term bicycling is as old as the industry. "It was the practice of some exhibitors to contract for a picture for one theater and then, with his bicycle, to ride it to another theater and get a rental for it, or to show it in

[11] See Article 8, page 27, of Government Brief.

another theater that he owned and operated himself."[12] The Government contended that under the Standard Exhibition Contract every exhibitor charged with bicycling had to have the question of his violation of the United States Copyright Act heard and determined by a board every member of which was probably prejudiced against him, and every member of which might have a direct interest in the outcome of the matter. This charge of general prejudice was supported by two types of evidence.

First, at the Film Board of Trade Conference in June, 1927, Mr. Hess stated:

> It is becoming more and more difficult, particularly in view of the fact that we are so active now in trying to run down bicyclers, to have distributor arbitrators who have no indirect interest in the matter that is presented to them for determination, because when we find evidence of bicycling we generally find that practically every company is affected . . . Practically every company in (his) territory with the exception of one or two were concerned in a case of bicycling he discovered. Necessarily if I am sitting as an arbitrator upon a claim made by Famous Players for bicycling its pictures, and I too have a claim against the same exhibitor and my case has been filed, I have an indirect interest in the result of the controversy, and I am properly subject to challenge on the ground that I will be or am presumed to be prejudiced. When any of you are confronted with such a situation it would be well to first advise with us before proceeding to arbitration. We then will work out a procedure to give the exhibitor a fair deal.

Second, the danger of a biased award was further increased by virtue of the fact that the investigation of bicycling cases was authorized, financed, and directed by the Copyright and Protection Bureau. This bureau was created within the Hays organization in 1926, as a result of an investigation made of the alleged violations on the part of exhibitors. The defendants contended that the establishment of the bureau was thoroughly supported, if not suggested, by the exhibitors, and that the exhibitor representatives were whole-heartedly in favor of any plan that would help to wipe out this evil.

Article 4 provided that the exhibitor must pay for his films at least three days in advance of the date of shipment. Mr. Hess interpreted this clause as providing, in effect, that even if the

[12] See Brief of Paramount Famous Lasky Corporation, Equity 45–100, District Court, Southern District of New York.

exhibitor might reach some other individual agreement as to terms of payment with a distributor, *if subsequent disputes arose*, the provisions of Article 4 and not the individual understanding would be effective. "If because of the request of an exhibitor, in the exercise of the judgment of the distributor, that provision of the contract is waived, it should not place the exhibitor in an advantageous position because of the refusal of the Board of Arbitration to enforce payment." And again: "While it is true that some distributors may, in order to curry favor with an exhibitor, waive their right to demand payment in advance of the delivery of prints of pictures, relying on the Board of Arbitration by an award to enforce the collection of rentals, distributors making a practice of waiving such right for such reason should be informed that such practice is considered to be unethical." The government therefore contended that the Boards of Arbitration became in effect a collection agency pure and simple, and that awards were made solely for collection purposes. It offered as evidence that in the case of a typical Board of Arbitration of 275 awards made, 238 required payment of money damages. The government also contended that Article 4, which was "arbitrarily imposed upon the exhibitors by the agreement of the defendant distributors, precludes any negotiations relative to the terms of payment irrespective of financial and credit standing of the exhibitors."

This argument clearly involved two issues, rather than one. First, could it be contended that Boards of Arbitration were merely collection agencies because a large portion of the awards called for the payment of money damages, and second, did the clause cited preclude negotiations relative to terms of payment?

The attack on the question of terms was stated in the following words: "The record does not contain any evidence whatsoever to explain why it would not be reasonable for any exhibitor to be able to contract on the basis of any method of payment which might be acceptable to both parties. The evidence does not indicate that any other industry in the country is conducted solely on the basis of an agreement of pay cash in advance of delivery of the articles contracted for."

The defendants argued that the requirement undoubtedly was based on the distributors' desire to have their money before a positive print was shipped. However, they stated that in actual

practice the three-day requirement was not enforced, for many pictures were shipped C. O. D. and even on open account, and usually it was only when dealing with an irresponsible exhibitor who did not pay his rentals that it was evoked.

Article 8 provided in detail for the method of determination of play dates. The chief criticism of this article arose over the relationship between first-, second-, and subsequent-run distributors. Most contracts with subsequent-run exhibitors did not provide for actual play dates.

> It is clear that under the provisions of the 1928 Standard Exhibition Contract subsequent-run exhibitors have no right to secure the delivery of motion pictures for which they have contracted unless definite playing dates are specified in the contracts. The great majority of contracts with subsequent-run exhibitors do not specify any definite playing dates for the pictures. Such contracts generally provide for the exhibition of a certain number of pictures per week or per month when available. The availability of these pictures for the subsequent-run exhibitors depends entirely upon the dates of their exhibition by the prior-run exhibitors . . . Every distributor naturally desires to have his contracts played out as rapidly as possible. The difficulties experienced by subsequent-run exhibitors in securing play dates are occasioned by delays in the exhibition of the pictures by the prior-run exhibitors, so that the pictures do not become available for the subsequent-run exhibitors. Of course, such difficulties are not occasioned by any disinclination of the distributors to have the pictures played and paid for by the subsequent-run exhibitors when they are available. The absence from the contract of any provision whereby subsequent-run exhibitors can force pictures to be played or released by prior-run exhibitors, so that they shall be available to the subsequent-run exhibitors, prevents the subsequent-run exhibitors from having any control whatsoever over their play dates and over the arrangement of their programs.[13]

The defendants' testimony before the government disclosed that neither the contract nor the usual method of procedure specified any definite time after general release for mailing notices of availability; also that availability depended not only upon the possession of the print by a local exchange, but in particular upon the numerous variables, mentioned heretofore, that constituted the right of subsequent exhibition. It was further testified that any exhibitor, regardless of sequence, could resort to arbitration to force action on delinquent notices of availability despite the

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[13]Government Brief, pp. 94–95.

fact that a distributor might not have secured a first run for his photoplay.

Article 14 provided that the exhibitor should pay the distributor upon demand any taxes or fees which might be levied upon the distributor in the exhibitor's territory. Naturally the exhibitors had endeavored to obtain relief from this clause. Opinions varied as to its equity. The exhibitors contended that this was an undue imposition and that taxes and other similar fees rightfully belonged to the product. On the other hand, the distributors believed that it was not their duty to assume the burden of a local tax responsibility that had to do only with the communities in which the pictures were exhibited.

Article 19 provided that "this contract is complete and no promises or representations have been made by either party to the other except as set forth herein." The government introduced considerable evidence to support its allegation that this article was applied when exhibitors attempted to introduce verbal agreements in an effort to secure relief, but was not applied when the distributor introduced such evidence in connection with claims against exhibitors.

Commentary: On October 15, 1929, Judge T. D. Thacher held that the Standard Exhibition Contract as used, and in particular the provisions relating to arbitration, was illegal, "both at common law and under the Sherman Act." The way was left open, however, for revision. The following quotations are from the decision:

Assuming the contracts and the system of compulsory arbitration to have been just and reasonable in operation, the fact that many exhibitors were not represented in the conferences leading to their adoption can not be disputed . . .

That competition between the distributors has been promoted by the adoption of the Standard Exhibition Contract, and that in many ways general trade conditions have been vastly improved, I have no doubt, and so find. But the record is equally clear that all this good has been accomplished through the exercise and irresistible economic force consolidated by combination in the hands of the distributors, who collectively control the available supply of films and by virtue of this control have imposed their will upon the industry . . .

Gains resulting from such restraints to the industry as a whole do not in the eyes of the Statute justify the vicarious sacrifice of the individual . . .

Nothing that has been said should be taken in derogation of the right of trade or commercial groups, or of traders generally, to voluntarily impose upon themselves standard forms of agreement which do

not unduly restrict competition and thus restrain trade, or to agree that all controversies arising between them shall be settled by arbitration. Such agreements dealing only with the rights of those who execute and intend to be bound by them are normal and usual, and are proper instruments in the lawful conduct of trade. It is only when such agreements are sought to be imposed upon others, regardless of their wishes, by coercive combinations having the power to say, "Take what is offered or get nothing," that they become illegal . . .

Upon settlement of the decree the parties may suggest provisions, if such be feasible, under which uniform contracts containing arbitration clauses may be voluntarily adopted by the members of this industry without coercion or other unlawful restraint.

It is not possible within the limits of a commentary to discuss in detail all the various angles of the case.

There seems to be no fundamental criticism with the *machinery* provided for arbitration, other than that it is compulsory and not voluntary. The government contends that the difficulty with the compulsory feature lies in the fact that it is made compulsory by all distributors and under practically an identical contract. Most states of the Union do not provide specific arbitration laws. It is, therefore, difficult for any one who is familiar with the industry to understand how any form of compulsory arbitration set up by an individual producer-distributor would be effective unless he could secure the cooperation of other producer-distributors in enforcing an award. In fact, it is probably true that the supplementary agreements of which the government complains have their origin in the very fierceness of the competition between distributors. It is because so many exchange managers are unwilling to trust so many other exchange managers that check-ups on each other's actions seemed to be called for. If the government be right in its contention that united action to secure compulsory arbitration is illegal, then it would seem as though the situation provided another illustration of an instance wherein the law fails to take cognizance of what would appear to be sound economic policy.

It must also be borne in mind that it is necessary to segregate clearly the arbitration clause and the rules supplementing that clause on the one hand and, on the other hand, the various specific provisions in the contract to which objections have been raised. It is no fault of arbitration that the contract to be interpreted is not all that it might be. The government maintains that the contract itself is unfair, that arbitration is merely a means of enforcing a particular interpretation and thus of attaining certain definite ends. Even if one were to grant that this is so, it might be suggested that arbitration may provide the best way out for the exhibitors. Under the present arrangement the exhibitor has at least an opportunity to appear before a presumably

disinterested body and present his side of the case, thus preventing an "unfair contract" from being interpreted arbitrarily and without reasonable opportunity for recourse.

This suggests the third main line of attack on compulsory arbitration, namely, that prejudice against the interests of the independent exhibitors is inherent in any form of compulsory arbitration which has yet been suggested. The question as to whether or not in the long run prejudice exists must resolve itself into a question of individual judgment. It is interesting to observe that the Government Counsel is reported to have replied to an inquiry from the court to the effect that it had not observed any evidence of prejudice, that on the contrary its attack was centered upon the set-up. It is contended that representatives of the distributors will never decide against their employers on any question of major issue for fear of losing their positions. The loss of such positions would be a more serious one because it might be doubted whether or not such a discharged exchange manager could find employment with any other large producer-distributor under the circumstances. Furthermore, although a distributor representative may not sit in in cases involving his own interests, yet a claim filed against himself would be jeopardized if he had previously failed to support other distributors. The exhibitors in their turn are fearful lest failure to support exhibitors' interests should result in retaliatory measures against them if at some future time a complaint should be filed against them.

On the other hand, it must be borne in mind that the keenest of competition does exist between distributors for local business. Sales are dependent in large measure upon exhibitors' goodwill. Not to cultivate such goodwill would seem to be a short-sighted policy. Instances have unquestionably occurred where distributors have failed to urge claims and even have refused to present definite evidence in support of a claim for fear of losing exhibitor goodwill. It would seem that, granting the opportunity for prejudice and the undoubted exercise of it from time to time, in the long run the contract as used is fairly interpreted and Boards of Arbitration hesitate to render an award which is not in their minds a fair one.

November, 1929 H. T. L.

Allied States Association of Motion Picture Exhibitors

EXHIBITORS' COOPERATIVE ASSOCIATION—MOTION PICTURES

Trade Association—*To Promote Interests of Independent Exhibitors.* In 1928 several independent motion picture exhibitors organized an association to promote and protect the interests of independent exhibitors against producer-controlled theater chains. The association comprised regional and state groups, coordinated by a national organization consisting of a president and general counsel as executive head, a board of directors, and an executive committee. Several months after the organization of the association a conference of the several branches of the industry was held for the purpose of deriving new forms of contract and of arbitration. Committees submitted proposals dealing specifically with arbitration, contract form, protection, theater expansion, and exhibitors' organization.

(1928–1929)

The advent of producer-controller theater chains, together with the practices resulting from widespread integration in the motion picture industry, in 1928 seriously affected the existing and future status of the remaining wholly independent exhibitors. Many closely connected with the situation believed that the position of the more efficient independent exhibitors was sound from an economic standpoint, but that, principally because of unorganized effort, these units were unable to cope with the conditions imposed upon them by the large corporations, which were reported to exercise a unified control over 98% of the American production of motion pictures.

Convinced that a strong national association would provide an effective organization to promote and protect the cause of the nonaffiliated theater, several outstanding independent exhibitors, on August 10, 1928, reorganized the Allied States Association of Motion Picture Exhibitors.[1] The original Allied States Association was formed in 1923 by several prominent members of the Motion Picture Theater Owners Association as a protest against some of the practices of that group. The Motion Picture Theater

[1] Referred to throughout the case as Allied States Association or simply as Allied.

Owners Association had been the recognized exhibitor organization, having been instituted in 1920 by a large delegation of independent theater owners to combat the policy of the then Famous Players Lasky Corporation in acquiring theaters. The organization of the Motion Picture Theater Owners Association comprised both regional and national government. The state or regional groups operated as independent associations. National officers were elected by representatives of the various regional associations. The national association served to coordinate activities and to provide unified action on problems of major importance to motion picture exhibitors. Dissension in the ranks of the Motion Picture Theater Owners Association, in 1923, centered about the election of certain officials who were reported to be in sympathy with producer-theater development.

The organization of the original Allied States Association was patterned after that of the Motion Picture Theater Owners Association. In many instances, the regional groups simply transferred their allegiance from one national organization to the other. Officers were elected from the founders, and funds were first raised through popular subscription. The Allied movement spread rapidly but failed to develop into a strong national organization, principally because of rather indifferent regional support. This original Allied group did not achieve outstanding success, its accomplishment being of value principally as a threat against alleged unfair producer activities. In 1926, following a promise by the Motion Picture Theater Owners Association to serve the interests of the independent exhibitor primarily, the Allied States Association voted to disband and affiliate with the former.

Although the Motion Picture Theater Owners Association continued to operate, it failed to remedy the difficulties facing the independent exhibitors. The organization was not particularly strong or aggressive. In 1927, because of an expressed belief that more could be accomplished in a round-table discussion than by open hostility, producer-distributor theater owners were granted membership. In the following months, the organization became quite definitely dependent upon the new type of membership for its financial support, and in 1928 with the election of several of the chain representatives to the directorial cabinet, it was apparent that control of the national governing body had passed from the hands of the independent exhibitors.

Believing that their efforts within the organization of the Motion Picture Theater Owners Association were futile, certain prominent independent exhibitor-members of the original Allied group, acting in behalf of their own and several other regional groups, decided to reorganize the Allied States Association. In their opinion, the existence of the independent exhibitor was necessary to the welfare of the industry. They pointed out that the public's interest and that of the independent exhibitor were one and the same, whereas the affiliated theater's interest was primarily that of the producer. It was their opinion, furthermore, that the independent theater possessed a certain individuality not noticeable in the large chain. From an economic standpoint, they believed that efficient, modern, independent theaters, given a reasonable supply of good pictures and fair treatment by producers, were in a position to compete favorably with affiliated theaters. They realized, however, that, as individuals, it would not be possible for independent exhibitors to protect their interest in competition against a unified producer-distributor-exhibitor effort. It was proposed, therefore, to create a strong national organization known as the Allied States Association to provide an effective agency to promote and protect the interest of the motion picture exhibitors of the United States in a lawful manner, and, to the extent that the interests of the exhibitors coincided with the interests of the producers of the motion picture industry, to promote and protect the interest of the industry as a whole.

The founders of the new Allied movement believed that its success was largely dependent upon securing the services of a prominent outsider to lead the organization. Preliminary efforts, therefore, were confined to the election of temporary officials; to the raising of funds, $25,000 of which was subscribed immediately and $100,000 assured in the very near future; and to missionary field work. In January, 1929, the association announced the appointment of Mr. Abram F. Myers, formerly chairman of the Federal Trade Commission, as president and general counsel. His contract was reported to cover a number of years of service with an optional renewal clause appended thereto. Mr. Myers had acquired an intimate knowledge of the motion picture industry through his activities in the government's suits against the General Film Company and the Paramount Famous Lasky Corpo-

ration, and as chairman of the Motion Picture Trade Practice Conference held in New York in October, 1927.

Immediately following the appointment of Mr. Myers, the Allied States Association formed an organization, adopted a constitution, and prepared for an extensive development campaign. The organization was designed in such a manner as to minimize internal politics. Its structure was similar to that of the original group; that is, a national or federal government was formed to coordinate regional or state groups on matters of common interest. Regional groups were free to conduct their own affairs, except in matters pertaining to national policy.

To attain its declared objectives the Allied States Association required of its members the right to represent them and their respective exhibitor interests in public relations and in negotiations with other branches of the industry, including suppliers of sound equipment; to acquaint the public and the various agencies of the government with conditions in the motion picture industry from the standpoint of the exhibitor; and to aid and encourage directly, and by cooperation with others, the development of higher standards of artistry and of moral and cultural values in the production of motion pictures.

The association further demanded the right to use its endeavors to promote fair methods of competition in the motion picture industry and to oppose restraint of trade and monopoly wherever those conditions existed; to gather, compile, and disseminate for the benefit of its subscribers and the interests represented by them, useful information concerning operating conditions, including relations with the suppliers of film and equipment, with labor organizations, and with various agencies of the government; and to do all other acts and things proper or necessary to the attainment of the objectives of the association.

Any duly organized association of motion picture exhibitors was eligible for membership in the Allied States Association. Application for membership involved forwarding to the home office of the association in Washington, D. C., a duly executed agreement with an attached copy of the Allied States constitution, together with information as to the territory governed by the applicant, and the name of the applicant's proposed representative. Applications for membership were acted upon at the first succeeding meeting of the governing board of the association. Candidates

were elected to membership by a majority vote. During the interval between receipt of application and action of the board, the applicant was considered a member. Each regional association was entitled to representation in the national government by designating one representative on the board of directors. Each representative was entitled to one vote only.

Any exhibitor of motion pictures, including affiliated theaters whose interests coincided with the object of Allied States, was eligible for membership in state or regional associations. Regional associations were to be recruited from the ranks of the regional groups of the Motion Picture Theater Owners Association and from independent associations by the transfer of the entire memberships of such groups to the Allied States Association; and through the formation of regional associations by exhibitors who were interested in the development of the Allied plan.

The management and control of the Allied States Association was vested in the board of directors and the executive committee, whose activities were limited only by the established by-laws of the organization. Neither group, however, was empowered with the right to impair the obligation of any contract made by the organizers and underwriters of the association with the person chosen by them to serve in the joint capacity of president and general counsel. It was the privilege of the board and of the executive committee to delegate all or any part of their authority to the president-general counsel.

The executive committee consisted of five directors elected by the board of directors. The executive committee acted on the behalf of the association, in any matter upon which the board of directors was qualified to act, when the board was not in session. The board of directors, in electing the members of the executive committee, designated one such member as chairman of the committee. Two members of the committee, designated by the chairman, constituted an auditing committee.

The president-general counsel was the supreme executive head of the Allied States Association. He was vested with full custody of all funds, both receipts and disbursements. The secretary maintained a complete and detailed record of all meetings of the board of directors and the executive committee. The duties of other officers, if any were appointed, were to be prescribed by the board of directors and the executive committee.

The expenses of conducting the Allied States Association were apportioned among the member groups in accordance with a schedule promulgated by the board of directors. Great care was exercised in the establishment of each quota and in its application. Local conditions were given due consideration and every effort was made to avoid any iron-clad enforcement which might prove detrimental. In the final analysis, each member association contributed in accordance with its financial capacity.

In practice, the operation of the Allied States Association was largely performed by the president and general counsel. The board of directors was scheduled for one meeting annually, although it was the president's privilege to call special meetings at any time. A majority of duly elected directors constituted a quorum. The president presided at all meetings of the board and was entitled to vote in case of a tie. Representation by proxy was permissible. On urgent matters it was the president's right to poll the board by mail or telegraph.

Immediately following the establishment of definite organization policies, various Allied leaders volunteered their services to hasten the progress of the membership campaign. At that time, control of the motion picture industry, by a process of both vertical and horizontal integration, had been vested with a very few major groups. A few established independent producer-distributors who did not own theaters made approximately 20 pictures each per year. These companies sold their products both to affiliated theaters and to those operated by independent owners. They endeavored to sell their products first to the chains, before offering them to the independent exhibitors. Small producing companies releasing through state right exchanges or direct to exhibitors had been reduced to less than five in number.

In the field of exhibition, the total number of theaters in the United States was estimated at 20,000, 16,000 of which operated regularly 6 days a week. Of this latter group, 7,000 theaters, which included practically all first-run houses in the larger cities and which returned over two-thirds of the total box office revenue in the United States, were either affiliated or under producer control. The remaining estimated 9,000 theaters, a majority of which were small-town and subsequent-run houses, formed the nucleus from which the Allied States Association hoped to formulate a unified organization. Although definite information

was not available, the Allied States officials estimated the purchasing power of their potential membership to be sufficient to return a sizable profit to at least 3 producers whose output averaged around 30 feature pictures each per year.

Immediately upon becoming organized, the Allied States Association began its attempt to solve the problems facing the independent exhibitors as a group. Following 1926, the motion picture industry had undergone a series of radical changes, many of which operated to the disadvantage of the independent exhibitor. According to certain exhibitors, block booking as enforced by the distributors, arbitration as practiced in the industry, and an unwieldy, inequitable, standard contract aggravated their situation. The real difficulty, however, was the tendency of producers to monopolize the field of exhibition. This invasion in its earlier stages was confined to the building or acquisition of large first-run houses in key cities. It was justified and excused on the ground of necessary exploitation of films. Producers, however, did not stop with a representative assortment of key theaters; rather, they began to acquire theaters of all classes, singly and in chains, in whole and in part.

Theater owners who remained independent often found it exceedingly difficult to compete with affiliated, that is, producer-owned or controlled, theaters. In the first place, affiliated theaters usually were given their choice of films. In a number of instances, complaints were reported to the effect that affiliated theaters in various places purchased practically every available film, despite their inability to use them all, in order to cut off the supply to the independent exhibitors. In other instances, favored theaters were said to have demanded and received protection[2] on the first runs wholly disproportionate with their rights and necessities. These demands involved not only longer periods of protection, but also unreasonable extensions of competitive areas.

Many independent exhibitors believed that the introduction of sound pictures was utilized by producers as a method through which they could hasten their monopolization of the industry. These exhibitors believed also that affiliated theaters found it to their own advantage to corner the supply of approved sound reproducing apparatus. This was accomplished without collusion

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[2] See Boston Theaters, page 561.

at first because sound pictures were new and the price of the reproducing equipment was prohibitive. When other less expensive, but generally satisfactory, apparatus was made available to the independent exhibitors, producers claimed the right not to furnish their films for reproduction on machines which they believed to be of inferior reproduction value. In some instances, producers were justified in not permitting interchangeability, that is, the reproduction of a film on a brand of sound reproducing equipment different from the brand of equipment which had been used in the recording of the film. In other instances, however, interchangeability was entirely justifiable. Where independent exhibitors were fortunate enough to secure generally accepted sound equipment, they were confronted immediately with greatly increased film rentals and, in addition, heavy score charges for the synchronized music rights. A few exhibitors reported that the prices for the sound product and score charge represented an increase of more than 100% over that charged for similar types of silent pictures.

Shortly after accepting the presidency of the Allied States Association Mr. Myers, as a first step, secured an injunction[3] to restrain sound equipment manufacturers and sound film producers from prohibiting justified interchangeability. In Mr. Myers' opinion, the case was quite similar to that of the government against the Motion Picture Patents Company. The results achieved by the injunction were exceedingly favorable.

To establish a foundation upon which the Allied States Association could develop and at the same time to overcome some of the important problems confronting motion picture exhibitors, a franchise was introduced in August, 1929. The agreement, known as the Allied States Franchise,[4] was a three-cornered business arrangement between two well-known motion picture producers, a leading sound equipment manufacturer, and the Allied States Association. The contract abolished compulsory arbitration, eliminated score charges, provided first-class sound reproducing equipment at prices and terms within the reach of small exhibitors, and assured small contracting exhibitors a supply of high-quality films of suitable type at prices which would enable them to make a profit.

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[3] *Exhibitors Herald World*, February 2, 1929.
[4] See Rainier Theater, page 596.

Following the announcement of the franchise plan, Mr. Myers and several Allied leaders, together with representatives of the cooperating producers and equipment manufacturers, toured the country in an effort to sell the franchise plan to exhibitors and at the same time increase the Allied membership. Effort was directed primarily toward securing the membership of existing state organizations. In some instances, such state groups called meetings for the purpose of deciding whether to join Allied. At these meetings opinion was divided; a number of objections to affiliation with Allied were raised. For example, there were already too many exhibitor betterment associations; the existing national associations were satisfactory; or producers were planning to help the independent and small-town theater. In other cases the transfer of allegiance from the Motion Picture Theater Owners Association was accomplished by acclaim, only the affiliated theaters remaining to carry on the already established local and national association. Because of the large number of affiliated theaters in each section of the country, there were but few instances where a transfer of allegiance to Allied States, or the recruiting of a new regional group, eliminated entirely a regional association of the Motion Picture Theater Owners Association. On the whole, the results of the campaign were satisfactory. By January, 1930, 34 regional organizations, whose combined memberships comprised a large majority of the independent exhibitors in the United States, had applied and been admitted to the association. The officials in charge had reason to believe that country-wide representation would be forthcoming in the near future. The franchise plan was also successful, one of the cooperating producers reporting the sale of over 2,000 contracts, the total value of which was in excess of $32,000,000 for a period of five years.

Several months after the organization of the Allied States Association, both the Standard Exhibition Contract and compulsory arbitration were declared in restraint of trade by a decree of the district court of New York. Inasmuch as the decree disrupted a common practice in the industry, the presiding judge suggested a conference of the several branches of the industry, the object of which was to derive a new motion picture contract and a form of arbitration that would be satisfactory to all parties involved, including the government. Since affiliated theaters

were not especially concerned with arbitration nor with the contents of a standard contract, the problem was of concern, primarily, to the producers in their relations with independent exhibitors. Producers counted on little difficulty in dealing with the Motion Picture Theater Owners Association, the membership of which in the latter part of 1929 was composed largely of producer-controlled theater chains. The Allied States Association, on the other hand, would probably oppose any contract submitted by producers unless that contract suited the interests of the independent exhibitors.

As a matter of expediency, the general manager of the Paramount Famous Lasky Corporation proposed a consolidation of the two exhibitors' associations. The Allied States Association favored a single organization. Accordingly, a joint conference of the several branches of the motion picture industry was called late in December, 1929, for the purpose of effecting an equitable and legal settlement of the problems involved. Five representatives were allotted to each of the conferring groups, namely, the Allied States Association, the Motion Picture Theater Owners Association, and the Motion Picture Producers and Distributors of America, Incorporated.

The committees representing the Allied States Association and the Motion Picture Theater Owners Association, respectively, submitted proposals which dealt specifically with arbitration, contract form, protection, theater expansion, and exhibitors' organization.

In order to effect an entirely voluntary system of arbitration, the Allied States Association recommended either that (a) a specific agreement to arbitrate should be included in each contract to be signed independently or that (b) a blanket agreement should be signed and filed with the local exhibitor organization and Film Board of Trade. The personnel of the proposed Arbitration Board included representatives of both the distributors and the exhibitors. For the distributors, any member of the Film Board of Trade was eligible. For the exhibitors, a group of 10 exhibitors or theater managers, not directly or indirectly connected with distributors to be named by the local exhibitors' organization were eligible.

Two alternatives were suggested regarding the organization of the board. First, in case the exhibitor so chose, the board should

consist of three members, one selected by the exhibitor from the ten who were eligible, one selected by the distributor from Film Board of Trade members, and the third selected by the other two members from a group of at least five arbitrators from outside the industry nominated by the American Arbitration Society and approved by the exhibitor organization and the Film Board of Trade. Second, in case the exhibitor so chose, the board should consist of "three and three" as in the past, with a seventh member, to be chosen from among the five outside arbitrators nominated by the American Arbitration Society, in case of a tie.

To obviate the stated principal defect in the existing system of arbitration, namely, the rule limiting the boards to the enforcement of the strict letter of the Standard Exhibition Contract, it was proposed that the board be authorized to exercise sound discretion in receiving for consideration all evidence, documentary and oral, bearing on the essential merits of each controversy, to the end that the awards might work even and exact justice, or the nearest approach thereto possible with human agencies. The board's power under no circumstance was to be extended to the fixing or changing of prices on existing contracts.

The Allied States proposal stated that, once the suggested reforms had been accomplished, it was believed that opposition by several states to the adoption of the uniform arbitration law would abate. It stated, furthermore, that a fair system of arbitration, approved by these states and bearing the full moral backing of the exhibitor organization, would effect compliance with awards in a vast number of cases. As an additional incentive to compliance, the proposal recommended that provision should be made to the effect that anyone refusing to arbitrate or abide by an award should not thereafter receive the benefits of the arbitration machinery, until willing to withdraw his opposition.

Definite expense budgets were also suggested. Exhibitor-arbitrators were to receive $5 per day plus traveling expenses. Outside arbitrators were to be paid the fees usually required in such cases. A filing fee amounting to a stipulated percentage of the claim was to be paid by the party filing the claim.

Concerning a new form of sales contract, the Allied States proposal emphasized the need for a concise instrument: one written in a language that would leave no doubt as to the meaning

of its provisions. It was suggested that the uniform contract when mutually agreed upon should be the master contract on file at every exchange and organization center, and that a simple contract should be drawn for the exhibitor to sign at the completion of negotiations. The latter contract should contain only those provisions that were peculiar to the transaction, and should incorporate, by reference, the general provisions of the Standard Exhibition Contract. In this way, it was contended, each transaction would be simplified; and the exhibitor would be called upon to read only those terms that pertained peculiarly to the single transaction.

Provisions for an assurance of equity to both parties involved in the contract were also made. To eliminate some of the uncertainty concerning the quality of product involved, it was suggested that producers plan their production schedules far enough in advance to enable them to give a fairly adequate description of the pictures in their contracts. Where distributors found it advantageous to use catalogues and other descriptive materials to encourage the purchase of their products, it was recommended that these booklets and work sheets should be considered a part of the contract for the purpose of determining whether there had been substitution.

The Allied States proposal emphasized the exhibitor's inability to ascertain to any definite degree the kind and quality of the pictures he contracted to exhibit. The suggestion was made, therefore, that the exhibitor have the right to exclude at least 10% of the pictures actually purchased without payment therefor. It was stated that the exhibitor should have the right to exclude poor pictures when the distributor reserved to himself and actually exercised the right to decide not to produce certain pictures that had already been sold, merely because he believed that it would not be profitable for him to make those pictures.

In cases where distributors included in their contracts the pictures of other producers with those of their own product, the Allied States Association would provide that pictures not made by the distributor be so designated as to indicate clearly the name of the producer and the place of production.

Many exhibitors had faced the problem of negotiating two distinct contracts for the showing of a picture. Frequently they negotiated a contract for the picture itself and then negotiated

for the records or score that must be used to exhibit the picture. The Allied States proposal recommended that, regardless of any legal technicalities or regardless of whether the contracts were negotiated at the same or at different times, or with the same or with different corporations, provision should be made that the acceptance of one contract was contingent upon the acceptance of the other. The elimination of score charges and the inclusion of a warranty as to the fitness for use of the film and records were further recommendations.

To overcome one of the major causes of dissatisfaction among many exhibitors, namely terms of protection, it was proposed that the new contract provide that whenever a picture was shown by any theater in a film exchange zone all other theaters in that zone should have the right to show that picture in the same order of release. Concerning percentage rentals, it was suggested that distributors refrain from refusing to accept play dates during the unprofitable weeks of the year. Such a proposal was deemed justifiable on the ground that the distributor should share with the exhibitor a few weeks of poor business when he participated in a share of many good weeks' business.

Reference was made to the common practice of over-buying by exhibitors, made necessary in many cases because of reluctance on the part of distributors to assign play dates to the first-run accounts. To minimize the effects of this recognized evil a remedy was proposed as follows: The distributor should be compelled to assign play dates to the first run and should not be permitted to sell a subsequent run until the prior run had already been sold; or else the exhibitor who was so delayed and was compelled to purchase other pictures had the right to cancel the pictures that he had been delayed in showing.

Statement was made that since a theater could be used only as such, since owners closed their theaters only as a last resort, and since such closing was invariably because of their inability to do a profitable business with the poor quality of pictures delivered to them, some provision for cancellation should be made. It was recommended as equitable, therefore, that a statute of limitations be included in the contract, providing that when a theater was closed for a period of three months during the show season all contracts and pictures in existence at the termination of this period should be void.

A zoning plan which would define clearly the protection granted to any theater located in the area zoned was recommended as not only desirable but positively necessary. Reference was made to the need for intelligent decision between the interested parties in the particular locality in which the plan was to operate. Such decision was to be derived through the appointment of a zoning committee, consisting of an agreed number of distributor-representatives to work with a like number of exhibitor-representatives appointed by the respective organizations. The duties of the zoning committee were listed as follows:

(1) To canvass the situation and to write a tentative plan.
(2) Before adoption of the plan to give notice to exhibitors and distributors, either by hearing or by placing in the hands of those affected a copy of such recommendations.
(3) To listen to, and give consideration to, objections or recommendations at hearings to be held before final adoption.
(4) To revise such a plan at stated or necessary intervals.

The Allied States Association recognized that the success of its proposed zoning plan was dependent upon the positive adherence to it by all exchanges. To carry out the proposed plan a few general principles were stipulated as essential. It was proposed that:

(1) The plan should specify the maximum protection for each theater to start from the last day of exhibition of the previous run.
(2) If day and date protection was included, a provision should be made as to a limited time after availability within which the picture must be played.
(3) A rule should be made that the foregoing of protection of one theater in favor of another should make such pictures available to all theaters in that zone at the start of the showing so favored.
(4) Each exhibitor should be given a copy of the plan.
(5) Such protection as granted should be over specific theaters, rather than area, but that the plan should be deemed to cover any new theaters erected in that zone or territory.
(6) In case of the failure of such a committee to meet, continue or agree, the same should be referred to a national committee as hereinafter provided.
(7) Exchanges should agree to use the terms of the plan in writing protection rather than or in addition to any zoning that they might use for their individual product.

For local committees, consideration should be given to the practical problem that, while certain houses in a zone might be so close to another zone as to make protection between the two necessary, such protection, known as overlapping, did not need to apply to other theaters in the respective zones.

Uneconomic theater expansion was considered by the Allied States Association to be a serious menace to the stability and well-being of the industry. Recognition was given to the impossibility of any binding agreements which might curtail such development. To alleviate conditions, however, the following course was recommended:

> In each Film Board territory a committee shall be constituted as follows: one member selected by the local exhibitor organization, one by the distributor, and the third by these two, from five arbitrators nominated by the American Arbitration Society.
>
> In any city, town, or locality where there is agitation for or rumors of impending theater expansion, the local exhibitor or exhibitors, or others, may request a hearing as to the necessity and/or desirability of such expansion. Such committee shall then convene and hold a hearing on the question.
>
> It shall be the duty of this committee of three to meet in the city or locality where such expansion is to take place, and afford a hearing to all interested parties. The committee should give full consideration to the needs of the community, the number of seats already there, the number and class of theaters then running, the legitimate need of outlet for product, and the return from the locality to the distributors, together with all other economic aspects of the situation and the business in general.
>
> After such hearings, the committee shall make its findings of fact and recommendations. If dissented to by any party in interest, such recommendations shall be reviewed by a national board, whose further recommendation shall be published as advisory in that situation.
>
> The necessary expenses of such hearings shall be borne by those requesting the survey.

The Allied States proposal recommended the establishment of a national appeal board of six, to be selected as follows:

> Two representatives from the distributors, two from the affiliated theaters, and two from the National Exhibitors Organization.
>
> This body shall review and make final decision and/or recommendation in all controversies which may be brought to them on appeal from local zoning boards or theater expansion boards.
>
> A vote of five out of the six shall be required for a final decision.

In case of no decision by this board, the question at issue will be referred for final decision or recommendation, as the case may be, to an arbitration committee consisting of one representative appointed by the National Exhibitors Organization, one appointed either by the distributors or the affiliated theater group, and a third to be selected by the two from a group of five nominated by the American Arbitration Society.

The Allied States Association could see no objection to a single independent exhibitor organization, provided that supreme executive authority was vested in a man outside the motion picture industry and provided that such an organization was developed along approved lines. Concerning the approved lines, the Allied States Association recommended its own organization as being one which was constituted in such a manner as would give full representation to every unit that was desirous of affiliating; any national organization to be successful should be patterned after the Allied plan.

The association made no objection to state or regional organizations having affiliated theaters included in their membership, provided that these theaters entered on the same conditions on which the independent theater owners were admitted in 1929 and 1930. Statement was made to the effect that, when affiliated theaters joined the local, state, or regional units, they should have on the board of directors of each organization at least one representative who should have full voice and vote in all matters. Such affiliated men, however, should not at any time hold any office in such associations.

Affiliated theaters would be required to pay the same fee per theater seat as that paid by the independent theater. An annual budget of at least $100,000 was recommended as necessary for the successful operation of the proposed National Exhibitor Organization.

The proposals submitted by the Motion Picture Theater Owners Association on matters pertaining to arbitration, contract form, and protection were fundamentally the same as those presented by the Allied States Association. Concerning arbitration, the Motion Picture Theater Owners Association commented on the effectiveness of the system, but in order to make it voluntary, suggested that a separate agreement to arbitrate should become a part of each contract. Under the plan, the Film Board of Trade and Local Exhibitors Unit would each provide four arbitrators,

the litigants having the right to reject any three. The board could act with two, four, or six members but never with more than three representatives from each of the two organizations. At all times the board would be evenly constituted as to distributors and exhibitors.

The contract form proposed by the Motion Picture Theater Owners Association was similar to that recommended by the Allied States Association with but two exceptions. First, the contract proposed by the Motion Picture Theater Owners Association did not provide the exhibitor with the right to cancel contracts after his theater had been closed for 90 days. Second, the Motion Picture Theater Owners Association proposed to include the work sheet as a part of the signed contract but would not include announcement books and similar sales promotion material.

The Motion Picture Theater Owners Association favored definite protection and availability reforms. It recommended the formation of committees, representing the various interests in each of the different film zones, to establish, by mutual agreement, equitable protection as to time, locality, distance, and character of theater. It was further recommended that a national committee, consisting of two distributors, two affiliated theater owners, and two independent theater owners, be appointed by the respective groups, before whom the findings of the zone committees could be reviewed, at the instance of the aggrieved party. The proposed national committee would not be permanent; rather it would be appointed as cases arose.

The Motion Picture Theater Owners Association, for a number of reasons, was definitely opposed to any regulations or restrictions on theater expansions. First, it considered the idea impracticable; second, it held that regulations restricting the building or acquisition of theaters would be in restraint of trade; third, it believed that many existing exhibitors, as well as potential exhibitors, did not or would not belong to any organization and therefore could not be bound by the agreement; and finally, it was of the opinion that too restricted building in any locality would confine the industry and block its development.

The Motion Picture Theater Owners Association favored the creation of a single national exhibitors' organization, comprised of state or zone branches, upon such terms and with such under-

standing as would be mutually agreeable and beneficial to the best interests of all concerned in the industry. The Motion Picture Theater Owners Association believed that a plan could be so devised as to perfect an independently controlled organization which would be satisfactory both to the independent and affiliated theater operators. The proposal submitted by the association did not provide any details concerning the formation and operation of such an organization.

COMMENTARY: For the good of the industry as a whole and particularly for the protection of the interests of the independent exhibitor, a strong national organization, devoted to the welfare of the unaffiliated motion picture theater owners, was distinctly desirable. Such an organization, which should stimulate fair competition between the independent and the chain theaters, would doubtless create a condition favorable to more efficient operation of both, and to a more ready recognition of the wishes and needs of the theater-going public. Where an industry has become as thoroughly dependent upon public interest as has this industry, and particularly where forms of public regulation are lacking, experience has indicated that it is dangerous for control to center unduly in the hands of a limited number of persons or companies.

Not only was an association of independent exhibitors desirable, but there was reason to believe that such an organization would achieve success. The fact that the box office receipts of unaffiliated theaters represented a minority percentage of the total box office receipts for all theaters does not warrant a conclusion that such theaters were unimportant or that they would not continue to be a factor of outstanding significance in the industry. Data are not as yet conclusive, furthermore, that the independent theater must operate at an expense substantially greater than that of affiliated theaters. Finally, because success had not always resulted from past efforts one is not justified in concluding that renewed attempts under different conditions and with capable leadership would be equally disastrous.

The success of the Allied States' form of organization was dependent upon a number of factors. Able, independent leadership was absolutely essential, both during the promotional period and for the subsequent guidance of the association. A substantial centralization of authority was desirable, even though criticism would inevitably arise sooner or later in consequence. In the present case this authority was vested in the man who served as president and general counsel. The continued success of the association was dependent upon obtaining very tangible results; mere promises and excuses would lead to disintegration. In this connection too, it is possible that the chief reliance must be upon

economic and financial results rather than upon legislative or even judicial action. The obtaining of the so-called Allied States franchise was an achievement of the sort that augured well for member support. The aggressive action on the problem of interchangeability was doubtless not without its effect upon the morale of the members of the Allied States Association, on the one hand, and upon producer-distributors on the other, although the subsequent decisions of the latter were probably influenced by other considerations as well. Though not mentioned in the case, the partially successful boycott of compulsory arbitration by the members of the Allied States was another tangible result of the cooperative action.

Several additional points should be considered in this case. One is a question of what action the Allied States Association should take on the issue of consolidation with the Motion Picture Theater Owners Association. A number of distinct advantages might well result by thus securing a unified front of all exhibitor interests. On such questions as those of taxation, arbitration, interchangeability, and censorship, a single national organization would be desirable. However, on such problems as these, wherein the interests of affiliated and independent theaters were likely to be common in any event, it would be probable that united cooperative action could, in most instances, be secured without effecting actual corporate fusion. Beyond these questions there existed very fundamental issues on which the interests of the affiliated theater and those of the independent theater were almost certain to be diverse. The question of protection might well constitute such an issue. Equally fundamental was the problem of securing the insurance of an adequate supply of pictures.

Emphasis is laid in the case on buying problems, not alone of supplies, but, of even greater concern, of films. No attempt should be made to minimize the significance of these objectives, particularly the latter. But it does need to be noted that important as the problems of buying might be, equally important problems of theater management having to do with accounting, personnel, local advertising, etc., lay outside the field of purchasing entirely. Many persons would consider these problems as of much greater importance than that of securing low prices on films. To insure active independent theater competition the larger problems must be vigorously attacked. It is safe to assume that the importance of these problems was recognized by those responsible for the success of the association. What detailed program may have been contemplated for dealing with them is not stated in the case.

In the solution of these major problems, the question of control was an important factor. It would appear that no real control over the members existed, nor was there any way in which the members could be compelled to abide by decisions made or to follow recommendations

offered. The effectiveness of any control was rendered difficult by the fact that an intermediary organization lay between the Allied States Association, on the one hand, and the individual theater manager, on the other. How far loyalty would be retained under adverse circumstances, and how far a keen appreciation of the unfortunate results which had followed a weakening of similar organizations in the past might prove effective in retaining the desired loyalty, were questions which only time could answer.

No attempt can be made to discuss in detail the specific proposals advanced by the Allied States Association nor to compare them with the report of the Motion Picture Theater Owners Association. These subjects are of great importance, but a consideration of them would require a discussion which would carry us far beyond the length of a commentary.

March, 1930 H. T. L.

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